ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor-General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1869.

WITH INDEX.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Monday, the 4th January, 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Excellency the Commander-in Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpur.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.

MADRAS RECORD

ARTICLES OF WAR BILL.

His Excellency the COMMANDER-IN-CHIEF presented the report of the Select Committee on the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

OUDH TALUQDARS' BILL.

The Hon'ble MR. STRACHEY presented the report of the Select Committee on the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate the succession thereto.

IMPROVEMENT OF LAND (N. W. PROVINCES) BILL.

The Hon'ble MR. STRACHEY moved that the Bill to facilitate the improvement of land in the North-Western Provinces be referred to a Select Committee with instructions to report in a month. He said that the Council would remember that in October last the Bill was introduced in order that it might be published in the Gazette. It was then not referred to a Select Committee, it having been thought right that the opinion of the Lieutenant-Governor of

the North-Western Provinces should first be received in regard to the details of the Bill. Although, as MR STRACHEY had explained, both the Lieutenant-Governor and the High Court at Agra had come to the conclusion that legislation in these matters was necessary, and although the Lieutenant-Governor had generally stated his approval of the provisions of the Bill, the opinion of His Honour had not then been received on the whole of the actual details. The views of the Lieutenant-Governor had only lately been received by the Government of India.

MR. STRACHEY might state briefly the reasons which had rendered legislation on this subject necessary. Some time ago it was decided by the High Court at Agra that by the general law applicable to the North-Western Provinces a tenant possessing a right of occupancy was liable to ejectment from his holding if he dug a *kacha* well or planted trees without the previous consent of the landlord. As mentioned in the Statement of Objects and Reasons—

"a *kacha* well is often a mere hole in the ground, a few feet deep, made at the cost of a few rupees, and, as stated by the Board of Revenue, it is very commonly impossible without such wells to obtain any crop at all. It is clearly not reasonable that, in consequence of the performance of acts which are essential to the proper cultivation of the land, a tenant should be liable to ejectment from his holding and to forfeiture of his property."

It was plain from the judgment of the Court itself that this view of the unreasonableness of the law was held by the Court, although it felt itself bound to administer the law as it found it. Since the Bill had been introduced there had been unhappily fresh instances of the real necessity for legislation on this subject. As the Council well knew, famine now threatened a considerable portion of the North-Western Provinces, and in some parts of the country that great calamity had actually already fallen on the people. In great tracts of country, at the present moment, it might be said that almost the sole remaining hope of obtaining any crop at all at the coming harvest lay in the digging of temporary wells for irrigation. If within a short time no rain should fall, except where canal irrigation had been introduced, the digging of wells would really be the sole means in some districts of saving the people from the extremity of absolute famine; and as MR. STRACHEY knew from an eye-witness, such wells were being at the present time dug literally by thousands — he might probably say by hundreds of thousands. He might ask whether any thing could be more preposterous than this—if he thought that this state of things was going to last, he would say could anything be more wicked—that we should have such a state of the law that the digging of wells, on which it

was not too much to say that the preservation of thousands of lives might depend, should be treated as a criminal offence. The mere digging of a well might render a tenant liable to ejectment from his holding, to the practical confiscation of his property and to utter ruin, at the very time when the Government had declared it to be one of its first duties to give the means of irrigation for protection against famine, and had expended or was about to expend millions in the construction of the greatest works of irrigation ever undertaken in the world. It was now actually a penal act for a tenant or even sometimes for a proprietor of land, as would be presently shown, to dig a well for the irrigation of his fields; and it ought to be remembered that this well irrigation was of almost greater importance to the country than any irrigation we could ever hope to give from canals. When all the great works already constructed and which were contemplated by Government had been completed, and when every drop of water which could be made available from the great rivers of Northern India had been used, he believed there would only be sufficient water to irrigate one-fourth part of the cultivated area of the country: the remaining three-fourths must continue to depend on natural resources, that was to say on the rain-fall and on wells.

He said just now that not only tenants but proprietors of land might incur those penal consequences if they dug wells for the irrigation of their fields; for, as everybody admitted, so-called tenants with rights of occupancy in the North-Western Provinces—and he supposed that of such tenants there must be several millions in those provinces—were in fact co-proprietors in the land with the superior landlord. He did not say anything on the question whether such tenures were economically good or bad, but every one would admit that they existed, and that they constituted actual rights of property in the soil. He did not suppose that any one would be found to assert that such rights should be liable to be swept away in consequence of the performance of acts which might be essential to the cultivation and protection of any crop at all, and the performance of which tended most powerfully and directly to save the people from perishing by famine—acts which were really not only highly beneficial to the community at large but to the superior landlords themselves. And in regard to this question, where tenants with rights of occupancy were concerned, he might observe that there could not properly arise any question as to the propriety of requiring that the tenant before digging a well should obtain the consent of the landlord, or give the landlord the option of making the improvement himself. For the right of the landlord in such a case was really confined to his right to receive rent from the tenant with right of occupancy, who was in fact a co-proprietor, and so long as

he received that rent the superior landlord had no power to interfere in any way with the land, nor indeed could he have any object in so doing The case of a tenant who held under a lease was hardly, he might say not at all, less strong. It might be argued—although MR. STRACHEY thought the argument altogether mistaken—that the tenant-at-will ought not, in the absence of any agreement on the subject, to receive compensation from his landlord for the cost of improvements made by him without the landlord's previous consent; but MR. STRACHEY wished to point out that the law as interpreted by the High Court in the North-Western Provinces went further than this. Not only did it say that the tenant could not claim compensation for improvements, but that the mere fact of making improvements such as digging a well, rendered the tenant liable to the cancellation of his lease and ejectment from his holding. MR. STRACHEY ventured to say that if that had not actually been declared by the High Court to be the law of the land, no one would believe it possible that such a law could exist in a country which had been for more than half a century under British Government. He did not think there could be much difference of opinion in regard to what he had now said. He believed there had been and would be a general agreement, at any rate up to this point, that the principle laid down in section 9 of the Bill was a proper principle, namely, that—

"no tenant shall be liable to have his lease cancelled, or to be ejected from the land in his occupation, merely on account of improvements made by him on such land."

But there were other questions with which this Bill dealt which were much more difficult. It seemed to him that while we said that a tenant should not be liable to penal consequences merely because he made improvements, it was also right to give the landlord a remedy against the tenant in case of injury to the land through bad cultivation or otherwise. With that object section 4 was introduced. It said—

"Every tenant shall cultivate and manage the land in his occupation in a good and husband-like manner, according to the custom of the country in reference to lands of a like nature, except so far as such custom is varied by this Act, so that the land shall not be injured or deteriorated, or its annual letting-value diminished."

MR. STRACHEY had said in introducing the Bill that it seemed right that as the Bill was intended to facilitate the general improvement of the land, the law which encouraged the making of improvements by tenants should also protect the landlord against injury to the land on the part of the tenant. It had, however, been objected to this provision, and in this objection His Honour the Lieutenant-Governor of the North-Western Provinces had expressed his concurrence, that such a provision was not actually required. His Honour said—

"Section 4 appears to the Lieutenant Governor unnecessary; and it might lead to complications and unnecessary litigation, while it is difficult to see that any practical advantage would accrue to proprietors from the same."

Although MR. STRACHEY thought as a matter of principle that that section was right and proper, and although he was strongly inclined to keep it in the Bill, he admitted that it might be a question whether the actual advantage to the landlord would be worth much, and he thought that was a question which would form a proper subject for consideration by the Select Committee and the Council afterwards. Again the Bill, following the Acts lately passed for Oudh and the Panjáb, proposed to allow all tenants, including tenants-at-will, to claim, under certain conditions laid down, compensation for certain improvements executed by them in the land, if the landlord should determine to eject the tenant from his holding, although such improvements might have been made without the landlord's previous consent. MR. STRACHEY had stated on more than one occasion that he had no doubt that that principle was correct. The principle was one which had not only been recognized in the Acts to which he had just referred, but which had also, as the Council would remark, been recognized as properly applicable to tenants-at-will in the Bills relating to tenures of land in Ireland which had been introduced into Parliament not only by the liberal Government, but in the last session by the Conservative Government also. It seemed to him that it was impossible that such provisions, if properly interpreted by the courts, should lead to injury to the landlord. He believed that they must necessarily prove as beneficial to the landlord as to the tenant, and that it was the duty of the Government so to frame the law as to encourage the improvement of the land. In India, and especially in Northern India, this was a duty of unusually high importance, because almost the only important works of improvement were works of irrigation, and it seemed to be folly, and worse than folly, to discourage in any way the execution of works which tended to increase the wealth and prosperity of the country, and to protect the people against the calamity of famine. Some persons, however, whose opinions were of great weight, believed that although it was proper to give the right of compensation to tenants with right of occupancy, the same benefit should not be given to mere tenants-at-will, and that view had been taken by the Lieutenant-Governor of the North-Western Provinces. In the letter lately received it was said—

"In respect of section 12, the Lieutenant-Governor concurs with the Board that the right of claiming compensation should be confined to occupancy ryots. It would not be fair to saddle the landlord with claims of the kind, unless the liability were admitted at the time of giving the lease. If the custom of long leases were prevalent, the case might be different, and

if the provision is maintained, the Lieutenant-Governor would limit it to cultivators who have held without lease, or on lease, or succession of leases for a continuous period of say not less than twelve years."

Although MR. STRACHEY could not personally concur in that view, he did not think it necessary that he should enter further into that part of the question, but thought that it was a subject which, after discussion by the Select Committee, ought to be further considered by the Council.

There were other points in the Bill which were very important, and which would require careful consideration, but he did not think it necessary to take up the time of the Council by entering at present into further detail; his only object now being to satisfy the Council that legislation was necessary, and that the present Bill might properly be referred to a Select Committee for consideration of the details which a legislative enactment on this subject ought to contain. The papers which had been received from the Government of the North-Western Provinces would of course be laid before the Council, and they would give to the Committee valuable aid in bringing the Bill to a shape which could be recommended with confidence to the Council for adoption.

The Hon'ble MR. COCKERELL said that as to the main object of this Bill for the improvement of land in the North-Western Provinces he entirely concurred in the remarks which had fallen from the Hon'ble Mover of the Bill. He went quite as far as Mr. Strachey in deprecating the maintenance of the present state of the law which admitted of what that Hon'ble Member had justly designated as the *penal* consequence of improvements made by tenants without the sanction of their landlords; and he thought Mr. Strachey was justified in assuming that the Council, generally, would admit the necessity of giving protection to tenants in the matter of improvements made by them, by not allowing them to continue, as they were at present in many cases, liable to be ejected in consequence of acts by which their landlord's property was substantially improved. MR. COCKERELL fully concurred in the opinion that in this matter the present state of the law was obstructive and opposed to sound policy, and that some remedial legislation had become absolutely necessary.

But some of the provisions of the Bill went beyond the mere protection of the tenant in his exercise of a just right. He referred to the provisions of section 12, which not only gave a claim to compensation for improvements made by a tenant having a right of occupancy, but conceded a similar privilege, in regard to improvements made by them, to tenants who had no right of occupancy. It would be said, perhaps, that the principle of the equity of such a concession had been already adopted by the legislature in the enactment of the Panjáb

Tenancy Bill. Mr. Cockerell was one of those who had doubted the expediency of what had been done in this direction; but he observed that the present Bill went farther even than the Panjáb Act. In the latter, a tenant without a right of occupancy, who had himself made some outlay in the improvement of his land, was entitled to compensation in the event of his ejectment by his landlord; but if the present Bill were to become law, such a tenant would not only be entitled to compensation for his own improvements, but also for such as had been made by his ascendant or predecessor in the occupancy of the land, and this moreover not only in the case of his ejectment by his landlord, but also when his tenancy had determined by effluxion of time. Under this rule, a lease-holder would have a claim to compensation, on the expiration of his lease, for improvements of the land held by him which had been made during that lease, although the land might have been leased to him for such a period and on such terms as to have given him a certainty of reimbursing himself in his outlay from the profits of such lease.

Such a tenant, he conceded, would have already, even by his own calculation, fully recovered the value of his disbursements, and to make provision, as this Bill would, for the further compensation of the lease-holder for his outlay, was much more than the equity of the case required.

If this Bill were proposed merely to apply to cases in which improvements had been made after the passing of the Act, Mr. Cockerell would even then think its provisions inexpedient, but he had looked through the Bill carefully and had found nothing which could make him suppose that the Mover proposed to confine its provisions to improvements effected after the passing of the Act, and therefore, as an instance of *ex post facto* legislation, he thought the Bill was, in regard to the provisions to which he had specially adverted, justly open to serious objection, and if those provisions were not modified in Committee, he certainly would feel himself bound to oppose the passing of the Bill. He thought the principle involved in the provisions to which he had objected a very important one, and therefore deemed it right to make these remarks before the Bill was referred to a Select Committee.

The Hon'ble Mr. Shaw Stewart said that he had carefully studied the Bill by the light of the remarks with which the Hon'ble Mover had introduced the Bill, and of the Statement of Objects and Reasons, which he regretted to state were the only documents placed before the Council. When the Panjáb Tenancy Bill was introduced a year ago, the Council by a large majority affirmed the principle that no Bill affecting the landed interests of any large district should come up for discussion until all the documents received from the local authori-

ties were placed before the Council. No such documents in this case had been submitted to the Council, and he would therefore appeal to the Hon'ble Mr. Strachey to adjourn his motion until the letter of the Lieutenant Governor, to which he had referred, had been circulated to all the members. To a certain extent the Hon'ble Mr. Strachey had removed this objection, and had read some quotations from the letter of the Government of the North-Western Provinces, but those were not sufficient to enable MR. SHAW STEWART to estimate what was the opinion of that Government in regard to this Bill.

The Hon'ble Mr. Cockerell had anticipated much of the objections which MR. SHAW STEWART had intended to take to the Bill, and it was unnecessary for him to repeat what had been already said. It appeared to him, from what he had already seen of the measure, that it would have the effect of very unjust *ex post facto* legislation, and unless the Hon'ble Mr. Strachey was able to explain away the objections taken by the Hon'ble Mr. Cockerell, MR. SHAW STEWART was not prepared to vote in favour of the present motion.

HIS EXCELLENCY THE PRESIDENT said, he should be very sorry if the motion of this day was adjourned in consequence of what had fallen from the Hon'ble Mr. Cockerell. Whatever might be the objections which could be fairly urged against any of the clauses of this Bill, the proper time for the consideration of those objections would be in Select Committee. All that was now asked of the Council was to affirm the general principle of the Bill, namely, that it was right and wise and politic that every encouragement should be given to certain classes of the tenantry to make improvements in the land. The Hon'ble Mr. Strachey had wisely and appositely alluded to the present state of things in the North-Western Provinces as illustrative of the great advantage which would accrue by the passing of the Bill. HIS EXCELLENCY would consider it an honour to his administration if this Bill could be passed during his incumbency as Governor General. But such could not be the case; and this being so, HIS EXCELLENCY held it his duty to give, while holding his present position, such force and weight as he could to the proposition of the Hon'ble Mr. Strachey. For his own part HIS EXCELLENCY could not conceive any reasonable objection to the main principles of the Bill. If it was wise and necessary for the State to expend large sums of money in improving the productive powers of the soil, and guarding and securing the country from the ruinous consequences of droughts, did it not behove the Council to encourage individuals to do what they could in furtherance of the same object? It would take years, he might say generations, to carry out the irrigation works which were in progress or in contemplation, and that at an enormous cost; but a

great deal could be done by individuals at an inappreciable cost, mainly by labouring with their own hands.

On the question of compensation for improvements, it seemed to HIS EXCELLENCY that the provisions in the proposed Act carefully and reasonably guarded the interests of the landlord. In the first place the Bill proposed to provide in the second portion of section 3, that in no case should the provisions of the Act affect cases where special agreements had been made, or should be made, between landlords and tenants. That being the case, unless the lease had provided that compensation should be given for improvements, he presumed that no improvements would be made during the existence of such a lease. Again, where there was no lease, the last clause of section 12 seemed carefully to protect the landlord: the words were—

> "the tenant, or his representative, as the case may be, shall be entitled to conpensation for the outlay in money or labour, or both, expended in making such improvements by him or the person from whom he has inherited, or whom he represents, within thirty years—"

Now take the case of the chief improvements which the tenant would make. Beyond reclaiming jungle, beyond cultivating waste land, which would cost him considerable labour, the improvements for which the Bill intended to provide were described in section 13, and were such as must improve the letting-value of the land. They were described as—

> "the construction of works for the storage of water, for the supply of water for agricultural purposes, for drainage, and for protection against floods; the construction of wells, the reclaiming, clearing and enclosing of waste lands and jungles, and other works of a like nature;
>
> "the renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same, and which increase durably their value."

Now it appeared to HIS EXCELLENCY that if it was right and just to give a man who made improvements coming under those limitations and conditions compensation for what he had done, it would be equally incumbent on us to give compensation to his heirs within a reasonable time. What man of sense or foresight would spend much money or labour in the constructiou of wells or *kuls* or cuts from canals and streams, if, at the day of his death, all would be lost? HIS EXCELLENCY could not conceive any possible distinction between the man who made such improvements and the heir who succeeded to the land. For his own part, without attempting to lay down rules as to what particular tenant should or should not be entitled to compensation, HIS EXCELLENCY must say his own view after all agreed with that of the Hon'ble Mr. Strachey that compensation should

not be confined to occupying tenants. It seemed to HIS EXCELLENCY that if a tenant-at-will had the enterprise and spirit to make improvements, he ought, under the limitations proposed, to be entitled to compensation for those improvements. He believed the Hon'ble Mr. Strachey had said that such a rule would in the long run be advantageous to the landlord. HIS EXCELLENCY believed that every man who had had much dealing with agricultural matters, at any rate in Northern India, would agree with him in saying that, in the great majority of cases, improvemants were made either by the cultivating proprietor or the landlord, and that where the landlord did not cultivate, he rarely ever made any improvements. Such being the case, HIS EXCELLENCY thought it would be a broad and wise policy to encourage improvements for the cultivation of the land in one way or another.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to facilitate the improvement of land in the North-Western Provinces—The Hon'ble Mr. Maine, the Hon'ble Sir Richard Temple, and the Hon'ble Messrs. Cockerell, Gordon Forbes and Shaw Stewart and the mover.

The Council adjourned till Monday, the 11th January 1869.

CALCUTTA,
The 4th January 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Government of India Central Printing Office.—No. 844 L. D.—2-6-82.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Government House on Monday, the 11th January 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'bie F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dig-Bijay Singh Bahádur, K. C. S. I., of Balrámpúr.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

CIVIL COURTS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART, in moving for leave to introduce a Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay, said that the Bombay Government had asked that the Bill might be introduced into this Council, and had stated the following reason for so doing :—

"The main reason for the passing of the Bill is the unsatisfactory state of the present law on the constitution of our Civil Courts. This law is contained in the unrepealed fragments of Regulations passed in the years 1827, 1830, 1831, 1833, and 1834, which enacted such modifications of the original system as experience suggested. And thus, although the law when ascertained may be simple enough, it has come to be stated in so complicated a way that there are few persons by whom it is thoroughly understood. So much of the old Regulations also has been cancelled or controlled by recent legislation, that they have become unsafe author-

ity. By this Bill the unrepealed portions of seven Regulations, and entire chapters of other Regulations, will be removed from the Statute Book, their essential provisions being reproduced in one convenient law."

The Bill also proposed several amendments in the law, with which, however, he would not trouble the Council, as they had already received the general approval of the Bombay Government and High Court, with one exception. That exception related to the patronage of the Subordinate Civil Courts. The Bill would be so drafted as to give effect to the views of the Bombay Government in this respect, but he would not fail to lay before the Select Committee the views of the High Court, which were to a certain extent opposed to that of the Government. The reason for bringing in the Bill in this Council was that the jurisdiction of the High Court was to a certain extent affected by it, and therefore the local legislature was not competent to entertain such a law.

The Motion was put and agreed to.

PRISONERS' TESTIMONY BILL.

The Hon'ble Mr. Cockerell introduced the Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that when the subject of this Bill was last before the Council he had stated that its main object was the removal of the disadvantage under which parties to suits were at present placed through their practical inability to procure the evidence of prisoners confined in any jail, however material the evidence of such prisoners might be to the issue of those suits. It only now remained to notice in detail the provisions of the Bill by which it was proposed to secure the attainment of that object.

All Courts were invested with authority to direct, subject to certain exceptions, the bringing up of prisoners confined in any jail situated within a hundred miles from the Court in which the evidence of such prisoner was required. The exceptional cases were where, having regard to the personal character or the circumstances attending the imprisonment of any prisoner or class of prisoners, it might appear to the Local Government undesirable to allow the removal of such prisoner or prisoners from the place of his or their confinement, and where, by reason of the sickness or infirmity of any prisoner at the time of the receipt of the order for his appearance in Court, the officer responsible for his safe custody might be unable to comply with the order without serious risk to the prisoner's health. In all such cases the Courts were authorized to procure the prisoner's evidence by commission, and the Bill prescribed the mode in which

all commissions issued by the Courts for taking the evidence of prisoners confined in any jail were to be executed.

An extraordinary power for the bringing up of prisoners confined in any jail situated at a distance of more than a hundred miles from the Court where their evidence was required, was vested in the High Courts.

That there might be some check upon the indiscriminate exercise of the power of bringing up prisoners to give evidence, all orders for such removal made by any Court subordinate to the District Court must, to have effect, bear the countersignature of the Judge of such District Court.

Ordinarily the expense incurred in the bringing up of any prisoner to give evidence, would be borne by the applicant for his production in the same way as the cost of the attendance at Court of any other witness would have to be borne by the party requiring such attendance, but that there might be no risk of the object of the Bill being frustrated owing to the expense of the bringing up of prisoners being more than any suitor was able to meet, special provision was made in the Bill for the payment in advance by the Court, at its discretion, from any funds at its disposal, of the cost of the prisoner's attendance to give evidence; the sum so advanced being made recoverable by the Government in the same way as costs of suit might be recovered under the Code of Civil Procedure.

Lastly, the power of framing rules for regulating all matters connected with the bringing up of prisoners to give evidence in any Court, as also the cost thereof, was vested in the Local Governments.

The Motion was put and agreed to.

OUDH TALUQDÁRS' BILL.

The Hon'ble Mr. Strachey moved that the Report of the Select Committee on the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate the succession thereto, be taken into consideration. He said:—"Sir, about a year and a half has elapsed since the time at which this very important Bill first came before the Council. When I moved for leave to introduce the Bill I explained the objects which were aimed at. I stated that its main object was really a very simple one; it was to confirm by law the arrangements affecting the rights of Taluqdárs and others in Oudh which were made under the orders of Lord Canning after the re-occupation of the province in 1858. I said that those orders had placed the Taluqdárs of Oudh in an altogether peculiar position; that they hold their estates upon a tenure

unknown in any other part of India, and that rights have been created by the British Government which it is necessary to protect by law.

I shall not now repeat in detail what has been stated fully in former debates, but I think it will be well to notice the main peculiarities under which the Taluqdárs hold their estates and which render legislation necessary. After the recapture of Lucknow in March 1858, Lord Canning issued his proclamation under which the whole of the land in Oudh was confiscated to the British Government. This proclamation became the means of redressing the injustice which, as Your Excellency and every one else has admitted, was undoubtedly done to the Taluqdá:s at the first occupation of the Province. It gave to Sir Robert Montgomery the power of making his arrangements for the pacification of Oudh unfettered by any thing previously done, and this proclamation, which was originally intended as a sentence of punishment and confiscation against the Taluqdárs, became ultimately in the hands of Sir Robert Montgomery the means of enlisting them on the side of the British Government. The political arrangements then entered into by Sir Robert Montgomery formed the basis of the subsequent policy of Lord Canning, and in October 1859 Lord Canning issued the well known orders on which the rights of the Taluqdárs now depend, and copies of which are before the Council. By these orders the Taluqdárs were not only confirmed in the possession of every thing they held at the annexation of Oudh in 1856, but new rights of a valuable nature were also conferred on them. The orders of the Governor General in Council, dated the 10th of October 1859, in accordance with which sanads were issued to the Taluqdárs, stated that—

"Every Taluqdár, with whom a summary settlement has been made since the re-occupation of the province, has thereby acquired a permanent hereditary and transferable proprietary right, namely, in the taluqa for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa.

This right is, however, conceded, subject to any measure which the Government may think proper to take for the purpose of protecting the inferior zamíndárs and village occupants from extortion, and of upholding their rights in the soil in subordination to the Taluqdárs."

It was the opinion of Lord Canning, and he stated this in his speech just before he left India in introducing the Bill to which I shall presently refer, that these orders which I have just quoted had already received the force of law from the Indian Council's Act, and there can be no doubt that this has been the general opinion of the best authorities. At the same time it cannot be very confidently assumed that the highest judicial authority, the Privy Council, would take this view, and the matter is one in regard to which it is not right

that there should remain any possibility of doubt. We are clearly bound to consider that if the orders of the 10th and 19th October 1859, and the sanads then conferred, did not actually create the law on this subject, that they at any rate represent that which Lord Canning intended to be the law and that which the British Government is bound by formal promise strictly to adhere to.

As I endeavoured to explain on a former occasion, the Taluqdár who holds a sanad from the Government has strictly a personal and exclusive right to the property in his estate; the Taluqdár, instead of holding his estate as formerly under the obligations of the Hindú or Muhammadan law according to which his power of alienation by sale or gift beyond his life-time was very limited, now possesses the absolute power of disposing of his estates as he likes. Not long after the orders just quoted were issued, other orders hardly less important were given by Lord Canning introducing the rule of primogeniture for regulating the succession to estates; and there can be no doubt that these orders, as well as the former ones, have either received the force of law from the Indian Councils' Act, or that such force ought to be given to them.

It was one of the last acts of Lord Canning before he left India to introduce a Bill to provide for the very same objects which are now contemplated; copies of that Bill and of Lord Canning's speech made when he brought it forward are now before the Council. After his departure from India the Bill was not further proceeded with under Lord Elgin's Government, and the subject was only revived about a year and half ago under your Excellency's instructions. There has been a general, I may say I think universal, concurrence of opinion that the Bill brought forward by Lord Canning was not altogether a satisfactory measure. I think that every one concurred in the opinion stated in a former debate by the Hon'ble Sir Henry Durand and the Hon'ble Mr. Maine, that the Bill was one which, under any circumstances, would have required considerable alteration. Still, independently of details of drafting, that Bill shows very distinctly what were the real intentions of Lord Canning.

In the former debate I endeavoured to explain that there had been much difference of opinion between the Chief Commissioner, Sir Charles Wingfield, and Lord Canning in regard to the conditions under which the Taluqdárs ought to hold their estates. Sir Charles Wingfield, while he entirely approved of the application of the rule of primogeniture to the succession of Taluqdárs, strongly objected to give to them the power of disposing of their estates in contravention of the principles of Hindú and Muhammadan law, and I quoted, in the former debate, passages from letters which he addressed on

this subject to the Government. He expressd his strongest apprehension that the effect of giving to the Taluqdárs a power over their estates not possessed by landholders in any other part of India, which he said was not actually enjoyed by them, which they did not ask for, and which was opposed to the tenets of their religion and to the most authoritative decisions of our tribunals, would result in the breaking up of the great estates in Oudh and in frustrating the very policy which the Government had so much at heart. He said that it was laying down a totally new doctrine to assert that a Taluqdár is free to dispose of his estate in any way he pleases, and that this novelty was opposed to the feelings of the people and to the policy of the Government. But the Governor General did not accept the views of Sir Charles Wingfield. In the orders of the 17th July 1860 he said:—

"The Governor General in Council will not consent to limit the absolute power over his estate which has been guaranteed to every Taluqdár in Oudh, and is convinced that the existence of such a power is just as essential to the prosperity of the province and to the maintenance of a landed aristocracy on a sound footing, as the extension of the rule of primogeniture in cases of intestacy. As, on the other hand, it will be in the power of every Taluqdár to refrain from making a will, and so to allow his estate to devolve undivided on his nearest heir, or, if childless, to adopt a son who will inherit the whole of his estate, or to bequeath it by will to any one person whom he may wish to designate as his successor, so, on the other hand, it is right that he should be at liberty to bequeath his estate to more than one person, in accordance with Hindú or Muhammadan law, or otherwise as may suit his pleasure."

These orders were carried into effect and sanads were given to the Taluqdárs accordingly; that is, they received an unlimited power of disposing of their estates either by gift during life-time or by bequest. I ought to have said before, in speaking of the difference of opinion on this subject between the Governor General and Sir Charles Wingfield, that the views of Sir Charles Wingfield were subsequently strongly supported by the Secretary of State for India. In a despatch dated 17th August 1861, he wrote as follows:—

"I do not perceive why, on grounds either of justice or of policy, your Excellency's Government desire to give the Taluqdárs a more absolute control over their estates than could have been the case if they had inherited them from their ancestors. In such cases the estates would have been subject to the prescribed conditions of such property, and could not have been disposed of in the unrestricted manner in which the proprietors are now declared by you to be competent to give or bequeath them to whomsoever they please. And when I consider the effects of *zanáná* influence, the frequency of family dissensions, and the general tendency to intrigue, among these people, it appears to me that this latitude of disposal, against which the Chief Commissioner has respectfully protested, may prove an obstacle to the accomplishment of the object which you most desire to realize, the preservation of property in the hands of the lineal representatives of the great families of Oudh."

But in spite of all this there can be no doubt whatever of the nature of the tenure under which the Taluqdárs actually hold. As I said before, Lord Canning refused to admit the validity of the objections of Sir Char les Wingfield, and the Taluqdárs were distinctly told that they would possess absolute power in disposing of their estates. Now, I, for my part, entirely agree in the remarks made by the Hon'ble Sir Henry Durand in the debate on the introduction of this Bill, to the effect that no limitation can now properly be put on the absolute rights conferred on the Taluqdárs of Oudh by Lord Canning, unless with the full consent of the Taluqdárs themselves. I gather from my Hon'ble friend's speech on that occasion that personally he agreed with the opinion which was maintained by Sir Charles Wingfield and which was held by the Secretary of State, that there was reason to apprehend that the effect of doing away with all restrictions of the Hindú and Muhammadan law would result in the breaking up of estates and the frustration of the policy which the Government had in view. This has always been my own view; but having conferred these estates without conditions, I think it clear we cannot now impose fresh conditions without the consent of the Taluqdárs themselves, however much impressed we may be with the belief that the restrictions proposed would be of real advantage to the Taluqdárs. The same view was formerly expressed by Your Excellency, and I believe it has been held by every Member of this Government.

When this Bill came before the Council the Hon'ble Sir Henry Durand expressed a wish that we had as a Member of this Council a representative of the Taluqdárs of Oudh, who would be able to speak with authority on their behalf. Fortunately that wish of Sir Henry Durand has lately been fulfilled, and we have now as a Member of this Council my friend the Hon'ble Sir Dig-Bijay Singh, the Mahárájá of Balrampur, who is well known not only to the Council, but I may say to the whole country, as the most eminent representative of all the Taluqdars of Oudh. I think therefore that I need not say much as to the real wishes of the Taluqdárs themselves in regard to this Bill, because Sir Dig-Bijay Singh can speak on such a point with infinitely greater authority than I can speak myself; but I have been assured not only by Sir-Dig Bijay Singh but by Maharaja Sir Man Singh and the other principal Taluqdárs who are now in Calcutta, and the same thing has been officially reported in a letter now before the Council in the strongest terms by Mr. Davies, the Chief Commissioner, that the Taluqdárs are most anxious that this Bill should become law. Supposing that the amendments which the Hon'ble Sir George Couper intends to propose to-day, to which I hope the Council will agree and which have the entire approval of the Taluqdárs,

are adopted, I believe there will be absolutely nothing in the Bill which is not in accordance with the wishes of the Taluqdárs.

It is proper that I should notice the principal changes made in the Bill since it was introduced. Very nearly every one of the changes have been suggested by the Taluqdárs themselves. The first change which it seems necessary to notice is in the definition of the word "Taluqdár." The difficulties in defining this word were found to be practically insurmountable. The Chief Commissioner, in his letter now before the Council, has stated his belief that no definition could be framed which would not lead to protracted litigation, and that the Taluqdars are unanimous that this matter must be left in the hands of the Chief Commissioner.

It is proposed, thherefore, as the Bill now stands, to entrust to the Chief Commissioner the duty, which is to be carried out within six months, of making a list of Taluqdárs to whom these special provisions of the law will be applicable. Mr. Davies has proposed that the list shall be drafted by the Financial Commissioner and a Taluqdár in whom the others have confidence, and be finally submitted for his approval, and he has intimated to the Taluqdárs that the Government will probably make no objection to this arrangement. The Government will as a matter of course authorize the Chief Commissioner to prepare the list in the way which he thinks best, and in a way which will be consonant with the wishes of the Taluqdárs.

The Chief Commissioner then notices a point which Mahárájá Sir Mán Singh wishes to be laid before the Council. He says :—

"Mahárájá Sir Mán Singh wishes the words 'heir and legatee' added after the word 'person' in the definition of 'Taluqdár.' He thinks that, without this addition, the successors of Taluqdárs will not be considered Taluqdárs. The Chief Commissioner would, however, observe that the Bill leaves it optional with a Taluqdár to choose, before the lists are prepared, whether he will have his estate descend according to the succession laid down in section 19, or whether he will have it follow the law of his tribe and religion. In the latter case the estate would be liable to sub-division, and we might have Taluqdárs with infinitesimal properties, a result which, in the Chief Commissioner's opinion, would not be desirable. It is almost unnecessary to point out that the legatee may be a servant, or a bráhman getting an acre or so as *sankalpa*, and the nconvenience that would arise from calling such people Taluqdárs.

The Chief Commissioner has explained this to Sir Mán Singh, and has assured him that the genuine successor of a Taluqdár will in all cases be recognized; but this is one of the points alluded to in paragraph 2 which he wishes to be laid before the Council."

I need only say that the Committee agreed with the Chief Commissioner; and I need not make any further remarks on this point, because, as the Council

knows, the Taluqdárs themselves expressed their wish to abide by the opinion of the Committee, and it is not a point on which they have laid any stress.

In section 3, which is one of the most important sections of the Bill, some additions have been made. The first addition was proposed by the Chief Commissioner; it provides for cases in which, subsequently to their issue, it was found necessary to make alterations in the sanads, and to provide against claims being set up to estates which had been originally settled with one party, but which were subsequently resumed and made over to another person. For example, in one case, a taluqá was settled in the name of a man who was afterwards discovered to have been a notorious rebel and who was killed in fighting against our Government; the estate was subsequently given to a loyal Taluqdár; but as the summary settlement was not made with him, he would not, as the Bill was originally drawn, have been entitled to the privileges of a Taluqdár. The additions made to the section at the suggestion of the Chief Commissioner have provided for this difficulty.

The next addition has been made at the wish of the Taluqdárs themselves; it extends the privileges given under Lord Canning's sanads to estates subsequently decreed to the Taluqdárs by the Court or Officer engaged in making the first regular settlement of the Province. This will be an important additional boon to the Taluqdárs.

It will be observed that there is an important change at the end of section 3. As the Bill originally stood, it provided that the estate should be held subject to all the conditions affecting it in the form of sanad contained in the orders passed by the Governor General of India on the 10th and 19th of October and republished in the schedule of the Bill. It was subsequently pointed out that all the sanads are not in that form, but that several other forms had for some reason or other been adopted. As it would be evidently unadvisable to invalidate those sanads, it was thought proper to insert the words "subject to the conditions under which the estate was held," and the form of sanad has consequently been omitted from the schedule.

An important alteration has also been made in section 4. It was pointed out by the Chief Commissioner that, as the Bill was drawn, the Taluqdárs, whose property on account of their special loyalty was exempted from confiscation, would be really on a worse footing in regard to the title to their estates than the Taluqdárs who took part in the rebellion, for it would be necessary for them to show that they had possessed before the annexation of

Oudh the proprietary right in their estates, while in other cases it would be sufficient that the summary settlement was made with the Taluqdár. This error has been corrected by the Select Committee.

An important section (6) has been added, which it is necessary that I should explain; it refers to the redemption of mortgages in taluqás. The Council will remember the circumstances under which Act XIII of 1866 was passed. The principal object of that Act was to permit the redemption of mortgages in taluqás executed after the 13th of February 1844, the terms of which had not expired at the date of the annexation of the Province, the equitable rights of mortgagors having been unintentionally confiscated and transferred to the Taluqdárs under the orders of October 1859. The Taluqdárs, admitting the justice and propriety of affording a remedy in such cases, agreed to waive the objections they might legally be entitled to make to the redemption of mortgages. The Act was passed, and the Taluqdárs were publicly thanked for their liberality by the Government and the Secretary of State. But unfortunately no reference to these claims of mortgagors was made in the Act itself, and it is now said on high legal authority that it is very doubtful whether, notwithstanding the notorious circumstances under which the Act was passed, a suit to redeem a mortgage in a taluqá is not legally barred; and the Chief Commissioner has lately reported that a Taluqdár who took a prominent part in making the concessions for which the Taluqdárs obtained so much credit, has actually pleaded in Court that redemption of a mortgage in his estate is barred by his sanad. There is not the slightest doubt that the Taluqdárs generally would entirely repudiate any such dishonorable conduct as this, but they themselves are of opinion that it would be very desirable to add to the present Bill a section which will remove all doubt on the subject. All that I need further say on this point is that there is no novelty of any kind introduced by this section; it merely repeats the provisions of the existing law, Act XIII of 1866, and removes the legal doubts which I have just noticed.

Section 7 has been added at the request of the Taluqdárs. It is taken from the draft Bill of Lord Canning, and provides that certain articles shall be treated as if they were heir-looms, and shall descend with the landed property I do not suppose this will be objected to.

In section 8, it is proposed to give to Taluqdárs or Grantees the option of declaring for succession according to the rules of primogeniture, at any time within six months after the passing of the Bill. If any Taluqdár to whose family the rule of succession according to primogeniture does not

already apply wishes it so to apply, he will now be able to carry out his wish. The Chief Commissioner writes:—

> "Originally the Taluqdárs stood out for the right to choose at any time, alleging Lord Canning's Bill to that effect. The Chief Commissioner, however, thought this undesirable, and he thinks the language of Land Canning's Bill, though not clear, does not possess the force the Taluqdárs would ascribe to it. The compromise contained in the Bill now submitted has, however, satisfied them, and the Chief Commissioner trusts will be approved of by Government."

I think that this proposal to which the Taluqdárs have agreed is reasonable, and I do not think it would have been right, in the absence of a distinct promise, on the part of the Government, to extend the option of introducing the rule of succession by primogeniture further than the Bill now contemplates.

Section 11 has received an addition making the provisions of the Indian Succession Act in certain particulars regarding the execution of wills, applicable also to gifts; to the effect that persons who are deaf or dumb or blind are not thereby incapacitated for making a transfer or bequest if they are able to know what they do by it; that one who is ordinarily insane may make a transfer during an interval in which he is of sound mind, and other provisions of a similar sort. No one can doubt that this is proper.

In section 13, clause 2 has been added at the express request of the Taluqdárs. As the Bill originally stood, a Taluqdár desiring to leave his estate to a younger son instead of to the eldest son, would only be able to do so by will executed twelve months before his death and registered. The Taluqdárs, although they accepted, with the exceptions presently to be noticed, the proposed restrictions on the power of gift and bequest to persons not belonging to their own families, desire that they should retain the power of setting aside the eldest son in favour of a younger son. There is no doubt that this is quite in accordance with the former custom of the country; and as the Taluqdár. propose it, I do not see any reason why the Government should object to it. I will here notice also the section which places restrictions on the power of the Taluqdárs to give or bequeath their estates for religious or charitable purposes. As the Bill originally stood, following the provisions of the Indian Succession Act, no Taluqdár or Grantee would have had the power of bequeathing his estate for religious or charitable purposes except by will executed and registered twelve months prior to his death; that period has, in the Bill as it now stands, been reduced to three months. The Taluqdárs alleged it was the custom of the country to make such gifts on the death-bed; and they requested that gifts or bequests of this nature should be permitted to be made up to a limit of two thousand rupees. I think this is a reasonable compromise, for

although the checks on the exercise of improper influence will not be so circumscribed as by the Succession Act, they will, I think, for all practical purposes be sufficient, and it is to the credit of the Taluqdárs that they have seen the propriety of applying checks on mortmain alienations similar to those which have been found necessary in all civilized countries.

Regarding the 14th and 15th sections I need not say much, because the Hon'ble Sir George Couper will propose to amend them. The Taluqdárs originally wished that these sections should be simply omitted. The Select Committee found it impossible to agree to that proposal, and this was really the only point on which there was any difference of opinion between the Committee and the Taluqdárs. The Committee thought—and I think there can be no question that they thought rightly—that the result of agreeing to what the Taluqdárs originally wished would be inconvenient to the last degree, although there can be no doubt that it would have been in accordance with the provisions of the Bill introduced by Lord Canning. The result would eventually have been that there would often have been two different laws or succession applicable to the property of the same person. This is not a question falling within the engagements of Lord Canning. Those engagements were made for special political purposes, and they were intended to give certain exceptional privileges to certain selected individuals; not only did Lord Canning not desire, but it would have been contrary to his policy to make these privileges separable from the families of the Taluqdárs themselves. If these sections had been omitted, and a Taluqdár to whose family the rule of primogeniture was applicable, had sold a patch of land to a shop-keeper, the succession to that field would have been for ever governed by the rule of primogeniture, although the succession to all the rest of the owner's landed and other property would be governed by a different rule. I will not say more on this subject, because Sir George Couper will propose amendments to which the Taluqdárs have expressed their assent.

In sections 21 and 22, which are sections of great importance, containing special rules of succession to the estatss of Taluqdárs, considerable changes have been made in the Bill as it originally stood, and the provisions of which were taken, I believe without any alteration at all, from the Bill of Lord Canning. These changes have been made solely at the request and in accordance with the wishes of the Taluqdárs. I will read what the Chief Commissioner has said about them :—

" The Taluqdárs are, it is needless to say, the authors of these changes, which are approved of, and agreed to, both by Hindús and Muhammadans. The Taluqdárs expressed very strong objections to clause 5 as it stood in the draft Bill, as they said, and said truly, that the introduc-

tion of the whole body of male collaterals in that place would exclude the widow and her adopted son entirely, though looked upon in the country as having the best title. They have therefore confined the collaterals to the brothers of the Taluqdárs and their descendants, and relegated the rest to the last clause and the protection of the ordinary law of the land. They have, moreover, introduced daughters' sons before adopted sons, and drawn a marked distinction between the issue of marriage and inferior marriage, a point upon which they have always laid much stress. Finally, they have desired to provide that the estates shall in no case undergo partition by the mere action of intestate succession. As the Bill has been drawn up at the request of the Taluqdárs for the security of themselves and their families, and Government had reserved no point in regard to this section, the Chief Commissioner considers it best to yield to their general wish, especially as he sees no reason for adhering to Lord Canning's draft Bill if the Taluqdárs wish it altered in a direction which, as far as it goes, is in accordance with the ordinary law of the land."

I do not think any one need object to meeting the wishes of the Taluqdárs in this respect, and I think that as these changes are not only in accordance with the unanimous desire of the Taluqdárs, but are also as far as they go in accordance with the Hindú and Muhammadan law and the custom of the country, we may fairly suppose that they will be beneficial.

Sections 24 to 28 regarding the maintenance of widows and children have been substituted for section 21 of the original Bill. That section was specially noticed with approval by my Hon'ble friend Sir Henry Durand when I introduced this Bill, and he said that if it had the consent of the Taluqdárs, or of a large majority of them, he thought that it would remove what was the essential blot in the Bill of Lord Canning. I am glad that the Taluqdárs have admitted the justice of what was proposed. Sections 24 to 28 as they now stand contain the proposal of the Taluqdárs themselves; they objected to some words which were indefinite in the original Bill and desired that the relatives who were entitled to maintenance should be distinctly specified, and they also proposed that a scale should be laid down beyond which the Courts should not be permitted to go. The persons, and conditions under which these persons should receive maintenance, have accordingly been specified. The Chief Commissioner thought, and the Committee also thought, that the maintenance proposed by the Taluqdárs was fair. I hope, as the Chief Commissioner has said, that it may be anticipated that there will really come before the Courts very few cases of this kind.

There is one point which I have omitted to notice. This regards section 19 by which it is proposed to apply to the wills of Taluqdárs certain sections of the Indian Succession Act. The Taluqdárs originally felt some doubt about this, as the Council will see from the Chief Commissioner's letter. The Select Committee, however, was very strongly of opinion that there was hardly any

part of the Bill more valuable to the Taluqdárs themselves, and it was therefore unwilling that, in consequence of what seemed to it a misconception on the part of the Taluqdárs, they should lose the very great advantages which the Committee thought would be bestowed on them by the introduction of this section. I am glad to say that the Taluqdárs on further consideration have agreed to the recommendation of the Committee that the section should be restored. The Chief Commissioner in his letter said :

"They are under some fear, however, that the stringency of the provisions concerning the registration of wills may militate against their interests, as they conceive that the Act requires the registration of a will within the district of the testator's residence, and that if they happen to die at a distance from their homes their wills may be invalid."

These fears of the Taluqdárs arose from a misconception of certain sections in the Succession Act. They had confounded probate of a will with previous registration, and in the sections of the Succession Act which it is proposed to extend to the wills of Taluqdárs, there is nothing referring either to probate or registration. The provisions of that Act regarding the execution of wills which it is proposed to make applicable to the wills of Taluqdárs are, I think it may safely be asserted, as good and simple as any provisions can possibly be.

The Chief Commissioner in his letter regarding the Bill wrote as follows, and I think it right to read this to the Council :—

"Mahárájá Sir Mán Singh wishes certain letters (specified in the margin) appended to the schedule of the Bill in addition to those of the 10th and 19th of October. But the Chief Commissioner is strongly opposed to comply with this request; first, because the language of these letters is either irrelevant or redundant as regards the subject-matter of the Bill; secondly, because it is in part extremely general and vague, and certainly not intended for legislative purposes. Moreover, as these letters were in existence when the draft of the Bill introduced by Lord Canning was made, the absence of all allusion to them in it is decisive as to His Excellency's not considering them as any necessary part of the deliberations of the Government, resulting in the grant of proprietary rights in their taluqás to the Taluqdárs. The reason which the Mahárájá gives for bringing forward the matter is lest he may hereafter be charged with neglect for not having done so at the present time."

1. The orders and promises of the Special Commissioner, passed and made under the sanction of the Chief Commissioner.
2. Para. 4 of Government letter dated 16th October 1858.
3. Para. 4 of the Viceroy's speech in Durbar at Lucknow in October 1859.
4. Para. 10 of the Secretary of State's despatch dated 10th February 1865.
5. Para. 22 of the same despatch.

The Committee carefully considered this point, and came to the conclusion, which I think the Council will agree was the only conclusion which could be come to, that it was impossible to include these letters amongst the orders to which it is proposed to give the force of law. The letters in question

have been circulated, and I think there is not likely to be any difference of opinion on the subject. I need only add that Sir Mán Singh has said to me that although he thought it his duty towards his brother Taluqdárs that the existence of these letters should not be forgotten, he is aware that there would be great difficulty in actually turning them into law. Any legal force which these orders of the Governor General may possess will not be affected by the present Bill if it becomes law.

There is one other point of importance in sections 5 and 6. These sections give to grantees the same rights and privileges which are held by Taluqdárs. There is no doubt that this is in accordance with Lord Canning's intentions; there are orders of his which show this quite plainly. But a difficulty has been suggested in regard to the redemption of mortgages in the estates of grantees. When the Taluqdárs agreed to allow the redemption of mortgages on their estates, nothing was said regarding grantees, and Act XIII of 1866, although passed with the consent of the Taluqdárs, cannot be said to have been passed with the consent of the grantees. The Chief Commissioner says:—

"The Courts may therefore any day be placed, as regards the grantees' estates, in the dilemma of having to decide whether the unconditional grant of the Governor General or the Statute Law is to prevail. Under these circumstances, the Chief Commissioner is of opinion that the Government should, following the plain intention of Lord Canning, enforce the same law for the preservation of under-proprietary and occupancy rights and for the redemption of mortgages in respect of the granted estates as of the taluqás acquired by summary settlement, but that at the same time it should announce its intention of compensating the grantee for any losses which he may sustain through the operation of that law."

I am authorized by Your Excellency in Council to say that the Government accepts this responsibility, and that if in any case, in consequence of the application to grantees of the rule which is applicable to taluqás, it should be found that a grantee is involved in loss, the Government will be prepared to make compensation.

One very important section has been added to the Bill which requires explanation. This is the last section of the Bill. When I introduced the Bill, I pointed out that in certain cases very injurious consequences had followed from the operation of Lord Canning's orders, and that in some cases great injustice had resulted. I gave as an example the following hypothetical case:—

"Before the annexation of Oudh there may have been two brothers in joint possession of an ancient family estate. One brother had the management of the whole, and gave to the other brother the share of the profits of the estate to which he was entitled. In 1858 a summary

settlement was made, to determine the amount of the revenue that was to be paid by each estate to the Government. It was supposed when this settlement was made that it would last only until a regular settlement could be made in the usual way. In consequence of some accident or other, one of our two brothers did not appear when the summary settlement was made. The other brother appeared before the settlement officer, and a summary settlement for the revenue was made with him accordingly. The other brother shortly afterwards came back, and reassumed, without objection, the position in the estate which had formerly belonged to him. A year or so afterwards he found, to his astonishment, that every right which he had possessed had ceased to exist, and that his brother had become the sole owner of the estate, with absolute power to give away, or sell, or bequeath, the whole or any part of it as he pleased. And on the death of this brother, unless he makes some other disposition of the property, the estate, supposing it to be one to which the law of primogeniture has been made applicable, will descend to his eldest son to the exclusion of the rest of the family."

There were many cases in which the rights in taluqás of persons who had interests co-equal but not subordinate to the Taluqdár had been swept away by the operation of Lord Canning's orders. I said in the last debate that I had no doubt that this result had never been intended. I did not propose it as a matter with which the legislature should deal, but I noticed that the matter was one which the Taluqdárs themselves had taken up, and that they were very anxious, without any interference on the part of Government, to make such arrangements for their less fortunate relations as were equitable. The Government has lately received, through the Chief Commissioner, a report of the proceedings of the Taluqdárs in regard to this matter. The Chief Commissioner's letter, and the report of the Financial Commissioner Colonel Barrow, have been circulated to the Council. The Chief Commissioner writes as follows :—

"It will be in the recollection of His Excellency in Council that the Courts have decreed that, under the sanads given under the late Lord Canning's authoriy to the Taluqdárs, the person named in the sanad, and he alone, has the right granted by the British Government, and that no other equal or superior right exists except that of the Government to its revenue. It is plain, therefore, that in the present state of the law the claimants in these so-called suits can get nothing from our Courts but that which the defendants, acting under the influence of the principal Taluqdárs, consent to give them."

It was thought by the Special Committee that this suggestion of the Chief Commissioner, which was in entire accordance with the wishes of the Taluqdárs, should be adopted. It was thought highly important to avoid the posisbility, I may say certainty, of future most harassing litigation on the subject. The Chief Commissioner and Financial Commissioner have given a satisfactory report regarding the arrangements which have been voluntarily proposed by the Taluqdárs for their relations who are in the unfortunate position which has

been described. The Chief Commissioner states that the great majority of claims which had been made against the Taluqdárs have been voluntarily adjusted, and I have been told that in most instances the arrangements have been accepted by the relatives of the Taluqdárs themselves. If in any cases completely satisfactory arrangements have not been made, all that one can say is that as these unfortunate people have now no legal rights whatever, we must be satisfied that they have received even this meed of justice. The Chief Commissioner has said that he—

"considers that the leading Taluqdárs mentioned by Colonel Barrow, and especially Mahárájá Sir Mán Singh, deserve great credit for the time and trouble which, in compliance with the Viceroy's desire expressed in the Darbar held last year at Lucknow, they have bestowed upon these complicated investigations. In some cases the maintenance awarded is on a very liberal scale, and the Chief Commissioner considers the general result as satisfactory as can possibly be attained under the circumstances.

As regards Colonel Barrow himself, the Chief Commissioner would observe that it is mainly to his energy, tact and personal influence with the disputants that a settlement has been made of these difficult cases. He will be glad if His Excellency in Council shall see fit to acknowledge the patient and unremitting exertions with which they have brought these vexed cases to a conclusion."

This recommendation of the Chief Commissioner has been acted upon in accordance with Your Excellency's orders.

There is nothing more in the Bill on which the Taluqdárs have made any remarks: consequently I need not take up the time of the Council any more. I however think it desirable to read to the Council the last portion of the Chief Commissioner's letter of the 3rd instant, though it refers to a subject on which, as I said before, the Hon'ble Sir Dig-Bijay Singh can speak with greater authority than I can. Mr. Davies writes:—

"Mahárájá Sir Mán Singh has repeated in strong terms to the Chief Commissioner the anxious wish of the Taluqdárs generally, that the Bill may be passed before the departure of His Excellency the Governor General. He professes himself, and the Taluqdárs generally, sensible of the advantage of having their titles to their estates affirmed by legislative enactment, whether they be already good under the Indian Council's Act or not. He further states that the Talqudárs now in Calcutta, whom the Chief Commissioner esteems to be among the most astitute and tenacious of the body, have in no way exceeded their delegated powers in expressing their common assent to the provisions of the Bill, which have been discussed with the Financial and Chief Commissioners in repeated and lengthened interviews, which have been most carefully translated for their information and criticism and to which they have categorically agreed. In the event of any doubts being felt on this head, the Chief Commissioner begs that the Taluqdárs themselves may be personally consulted, as he has not allowed his private opinions as to the tenor of the Bill to prevent his giving an undue share of his attention to the reflection

of the ideas of the Taluqdárs in the provisions of the Bill specially affecting their supposed interests, he trusts that the Government will concur with him in thinking that any further avoidable postponement of legislation can only result in injury and disappointment to the Taluqdárs themselves."

I will only add that Sir Mán Singh has stated to me personally exactly what he stated to the Chief Commissioner, and that I hope that this Bill may pass into law to-day.

The Hon'ble Mahárájá Sir Dig-Bijay Singh spoke in Hindústání to the following effect:—"The popular and useful Rules and Regulations passed by His Excellency the late Lord Canning and brought into action by Sir Charles Wingfield, together with the sanads imbued the minds of the Taluqdárs and the tenantry of Oudh with a feeling of peace and security, and the prosperity which resulted needs no comment. Similarly when, during the course of the Regular Settlement of the different taluqás, this feeling was in a measure disturbed by the institution of a vast number of cases by the near kinsmen, the sub-proprietors and the cultivators of the soil, all desirous of having their rights justly defined, the Hon'ble Mr. Strachey, Mr. Davies, and Colonel Barrow spared no trouble in preparing, according to Your Excellency's suggestions, and with the concurrence and assistance of the Taluqdárs, the Bill now under Your Excellency's consideration. This in my humble opinion, and in that of the Taluqdárs generally, is fully calculated to establish with greater precision and clearness our rights over our estates, and by setting aside all doubt and cause of dispute to place us in more substantial security. Being thus blessed, I beg herewith to tender to Your Excellency my warmest thanks on behalf of the whole community, who will for ever pray to the Almighty for Your Excellency's long life and daily increasing prosperity."

The Hon'ble Sir George Couper said, that with the permission of His Excellency he would say a few words regarding the provisions of the Bill, although, in so doing, he would have to traverse to a certain extent the same ground which had already been gone over so fully and so ably by his Hon'ble friend the mover, and might perhaps be repeating arguments which had already been heard by the Council during the progress of debates which took place a year and a half ago when he was absent from the country, and which he had not had an opportunity of perusing. In fact he was not previously aware that there had been any debates on the subject since the departure of Lord Canning. In such case, if what he had to say was a mere repetition of arguments which had already been heard, he could only throw himself on the forbearance of the Council.

The late Lord Canning gave the Taluqdárs of Oudh the absolute right of alienation in their estates, that is, he gave them the right to alienate their estates

by gift or will or sale, or in whatever manner they pleased, and at whatever time they pleased.

Sir Charles Wingfield, who was then Chief Commissioner of Oudh, and who certainly could not be accused of any undue bias against the Taluqdárs, represented to Lord Canning that he proposed to give them more than was allowed either by the Muhammadan or by the Hindú law, and more than was enjoyed by any other landholders in any other part of India. In spite, however, of Sir Charles Wingfield's remonstrances, repeated over and over again in language as strong as an officer in the position of a Chief Commissioner could venture to use when addressing a Viceroy, Lord Canning adhered to his original determination, and the letters to the Chief Commissioner in which he invested the Taluqdárs with the right to alienate their estates how and when they would, were believed, under the Indian Councils' Act, to have the force of law, although, as pointed out by his Hon'ble friend the mover, the highest legal authority thought it not impossible that the Judicial Committee of Her Majesty's Privy Council might be of a different opinion.

Now this Bill, while confirming the Taluqdárs in the rights of alienatión vested in them by Lord Canning, imposed certain restrictions on the exercise of those rights. At present, a Taluqdár, actuated by the freak of the moment, or actuated by the fright of the moment, as the case might be, could disinherit his whole family in favour of a clever dancing girl, or of a designing priest. The power of acting in this manner would not be taken from him, but, before doing so, he would have to observe certain formalities regarding which it was unnecessary for him (Sir George Couper) to enter into fully, seeing that they had been touched upon by his Hon'ble friend the mover, and must be apparent to every one who had read through the sections of the Bill. It seemed to him that nothing could be more just and equitable in themselves than these restrictions on an arbitrary power to alienate. Still, however, they *were* restrictions, and as such under ordinary circumstances he would oppose them. For, he submitted, any restriction by the legislature, under ordinary circumstances, on a promise formally and deliberately made by a Viceroy ten years previously, whether that promise in itself was right, or whether it was wrong, could not be too strongly deprecated.

For it was with the view to pacification after the mutiny that Lord Canning conferred this right to alienate on the Taluqdárs of Oudh. At the same time he conferred certain other privileges, notably the right of adoption, on the Chiefs of Central India and other feudatories, and if those Chiefs under ordinary circumstances were to see the right so bestowed on the Taluqdárs of Oudh restricted in its operation ten years afterwards by legislative enactment, it

stood to reason that they and everybody else would lose all confidence in the integrity of Lord Canning's promises and would naturally regard them as so much waste paper. Moreover, in the event of troublous times recurring, the best inducement which a Viceroy would have to offer influential Natives to espouse our cause would be the prospect of preferment or reward in land in the shape of a jágír or otherwise; and this, which as far as he knew was the most powerful instrument, if it would not indeed be the only instrument, in the hands of a Viceroy, under such circumstances as happened in 1857, would be rendered of no avail if it once got abroad that the solemn and deliberate promise of a Viceroy was liable to be subjected to restrictions, at a subsequent period, by an Act of this Council or of any other authority.

SIR GEORGE COUPER would ask His Excellency, who was in the most trying position of them all in 1857—he would ask His Excellency, he said—to conceive a repetition of 1857 without the godsend of the China Contingent, and with the route through Egypt stopped, and the Viceroy, in his desperate need, offering, say, Sindiah one or more districts in the Province of Bandelkand, or Holkar the restoration of one or more of his Ceded Districts. He did not mean, for a moment, to say that it would be right to adopt such an extreme measure, still less that it would be necessary. That, of course, would depend upon the exigency of the circumstances. But if the Viceroy did take such a step, what would his feelings be—what would the feelings of every other Englishman be—if either of those feudatories were to reply that the promise would suffice to induce him to cast in his lot with us if it could only be trusted, but, as he had no security that the legislature would not, at some future date, impose restrictions on the grant, he preferred to try his fortunes elsewhere, that is, he preferred to see whether he could not get all that the Viceroy offered, and perhaps more besides, by ranging himself on the side of our enemies.

In short, SIR GEORGE COUPER did not think it too much to say that if under ordinary circumstances, that Council, or any other authority, were to take it on themselves to set restrictions on a gift or privilege conferred by the representative of Her Majesty during time of need, or for the matter of that at any other time, the only hold which we still possessed on the Natives of this country would be lost, and we should have absolutely nothing left to trust to except the sword.

It was, therefore, only under the most special and exceptional circumstances that SIR GEORGE COUPER would vote for the passing of this Bill. Such circumstances, however, really did exist in this instance. They had been stated by his Hon'ble friend the mover, they had been conferred by his Hon'ble friend the Mahárájá of Balrámpúr, and might be summed up in the fact that, in con-

sideration of the benefits which they will otherwise derive from the Bill, the Taluqdárs of Oudh have formally expressed their wish and desire that the restrictions which it imposes on their original right to alienate may be made.

This seemed to him (SIR GEORGE COUPER) sufficient to satisfy the most jealous guardian of our national good faith as represented by the promises of a former Viceroy. For the Chiefs of Central India will know that, unless they themselves request that restrictions may be imposed on their right of adoption, Lord Canning's promises to them in that regard will be respected. Nor will any other past or future recipient of a Viceregal gift or privilege be disposed to distrust its validity, if he knows that he can only be restricted in its exercise with his own free will and consent.

SIR GEORGE COUPER had ventured to trespass at this length on the patience of the Council for two reasons: *First*, because, bearing in mind the fact that the Bill will impose restrictions on the right to alienate bestowed by Lord Canning and hitherto enjoyed by the Taluqdárs, he thought it highly desirable that the public in general and the Native community in particular should fully and thoroughly understand that the Bill had been introduced and would be passed, if it were passed, with the full consent and approbation of those whose interests were most immediately affected. *Secondly*, because he thought His Excellency and Hon'ble Members might perhaps like to hear from the lips of a man who was at Sir Charles Wingfield's right hand during his advocacy of the cause of the Taluqdárs in 1864 and in 1865, and who might therefore fairly claim to have their interests at heart, that he believed the provisions of this Bill would be conducive to those interests in the fullest and truest meaning of the words, so much so, that, unless it were passed, the original object which Lord Canning declared himself to have in view, the creation of a powerful landed aristocracy in Oudh, would, in the course of a generation, be completely defeated.

HIS EXCELLENCY THE PRESIDENT said :—" The Hon'ble Sir Dig-Bijay Singh has expressed his satisfaction at the prospect of the Bill before the Council being passed to-day ; I am also glad to be able to participate in that satisfaction. The Bill has been drawn with the view of giving the Taluqdárs of Oudh as complete rights as they wished over their estates, and I may venture to say as full powers as can reasonably be desired. I think with the Hon'ble Mr. Strachey that the limitations proposed on the power of alienating estates are wise and judicious. I can only desire further to add that I trust that the policy which, I hope, will this day receive the sanction of the Council, will be so worked by the Taluqdárs and their descendants that we never shall have cause

to regret that policy. It is in the hands of the Taluqdárs themselves to make their privileges a blessing or a misfortune to their relatives, to the subordinate proprietors, and to the cultivators of the soil, and I trust that they and their descendants will so discharge the duties which are bound up with their rights that the British Government will be satisfied that the policy which is now being declared is sound. I understand from the Chief Commissioner of Oudh and from the Hon'ble Mr. Strachey that a certain number of the Taluqdárs of Oudh are in circumstances of difficulty, partly owing to the events which occurred during the mutiny; and it is hard for any man placed in the position of a Taluqdár to be just and generous where he has difficulties in his own home. Within the last few years a very excellent Bill was introduced in the Council of the Governor of the Bombay Presidency, which eventually became law, enabling the Government to make advances to certain proprietors of land situated in a very similar position to that of the Taluqdárs of Oudh. These Native gentlemen were many of them in great distress; many had been sued in the Civil Courts, and decrees had issued against them: I believe also that in some cases their estates had been attached and were under the management of the Civil Courts. The measure introduced by the late Governor of Bombay had for its object to relieve these Native gentlemen from their difficulties and to place them in a satisfactory position. Under the provisions of that Act the Government of Bombay made advances to these Chiefs at moderate rates of interest (I think about five per cent.) with the view of enabling them to pay their debts. On the other hand the landed proprietors bound themselves to repay the money in suitable instalments, and also to adopt a proper mode of managing their estates, so that they should gradually retrieve their former position. By a late report from the Government of Bombay I perceive that this Act has worked satisfactorily, and even in the short period which has elapsed since it was passed, a number of the proprietors have retrieved their position, and most of the others are in a fair way of doing so at no distant period. I propose that the Government of India should act in a like manner towards the Taluqdárs of Oudh. I propose that a letter should be addressed to the Chief Commissioner of Oudh, bringing to his notice what has been done in Bombay, and that he should take the matter into his consideration, and submit a list of those Taluqdárs who he thinks ought to receive subventions from the Government. I think that under good management all those Taluqdárs who are really desirous of retrieving their position can do so if they pursue the course it behoves them to follow, and thus prevent their descendants from arbitrarily selling their estates to meet their necessities. If they fail, they will have no one to blame but themselves, and their descendants will be deprived of all means of maintaining their former position. The measure I propose

appears to me to be justified by sound policy, and I trust that it will also have the effect of showing the Taluqdárs of Oudh that the British Government really desires that they should be maintained in prosperity in their present position."

The Hon'ble Major General SIR HENRY DURAND said :—"Sir, I think that the proposal which Your Excellency has just made in favour of embarrassed Taluqdárs of Oudh is one of a financial character which if ultimately submitted after the reference announced and after mature consideration of the reply to that reference, is a proposal not unlikely to meet with a favourable reception and consideration by the Council. As a Member of this Council I can only say that there would be every disposition on my own part to entertain favourably a well considered measure of the kind indicated, because I feel that the conduct of the Taluqdárs has throughout, both in the consideration of the previous Oudh Bill and of the present Bill, been, for many reasons which I shall not enter upon, really admirable.

Having on several occasions, when the opportunity occurred, remarked upon the difficulties which beset a Bill which aims at combining conflicting principles of law, I shall only now very briefly advert to these inherent difficulties. It is impossible not to foresee that much litigation may arise under the provisions of this Bill, but still I am in favour of not delaying the passing of the Bill; for until some measure of the kind passes this legislature and gives legal validity to the status and tenures of the Taluqdárs, there must remain more or less of uncertainty as to their titles and estates. My hon'ble and learned friend opposite will correct me if I am wrong, but in the absence of a legal sanction such as this Bill confers, questions might arise when cases were appealed to Her Majesty's Privy Council, which might, according to the mode in which they were viewed by that high tribunal, endanger or prove detrimental to the rights of the Taluqdárs. I am therefore in favour of passing this Bill, if only to secure a substantial and legal foundation for the titles and tenures of the Taluqdárs—a basis which neither in this country nor before the highest tribunal, namely, Her Majesty's Privy Council in England, can be shaken. I am desirous of a formal legislative enactment being passed which gives the authoritative sanction of law to rights and titles and tenures not as yet confirmed by such additional security, and renders it difficult to contest them hereafter."

The Motion was put and agreed to.

The Hon'ble SIR GEORGE COUPER moved the following amendments:—

"1. That, to section 7, the words 'otherwise than as mortgagee or lessee' be added.

2. That, for sections 14 and 15, the following be substituted:—

Transfers and bequests to taluqdárs or heirs.

'14. If any taluqdár or grantee shall heretofore have transferred or bequeathed, or if any taluqdár or grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another taluqdár or grantee, or to such younger son as is referred to in section thirteen, clause two, or to a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession, as the transferor or testator.

Transfers and bequests to persons out of line of succession.

15. If any taluqdár or grantee shall heretofore have transferred or bequeathed, or if any taluqdár or grantee or his heir or legatee shall hereafter transfer or bequeath to any person not being a taluqdár or grantee the whole or any portion of his estate, and such person would not have succeeded, according to the provisions of this Act, to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property, if the transferee or legatee had bought the same from a person not being a taluqdár or grantee.'

3. That, in section 24, lines 4 and 7, the words 'and concubines' be omitted, and that in lines 13 and 15 the words 'or concubine' be omitted.

4. That, in section 25, line 29, the following words be omitted:—

'where the said revenue is such as is mentioned in clause (*a*), (*b*), (*c*), or (*d*), be one-fourth of the amount to which a senior widow is entitled under such clause, and where the said revenue is such as is mentioned in clause (*e*), (*f*) or (*g*), it shall'

And that, at the end of section 25, for the words 'is entitled under such clause' the following be substituted: 'of the deceased would be entitled under the former part of this section.'

5. That, in section 27, line 3, the word 'and' be inserted before 'his,' and in line 5 the words 'and his concubines' be omitted.

6. That, in section 28, for clause (*b*), the following be substituted:—

'(*b*) in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance.'"

As to the first amendment, he said the section as it stood enabled the Taluqdár to cause certain moveable property to devolve like heir-looms with his estate: the property so devolved to be enjoyed by the person in possession of the estate. But it was not the wish of the Taluqdárs nor the intention of the Select Committee that these concessions should extend to any person who might happen to get into possession of an estate under a mortgage or lease, and having no other right or interest whatever in the estate or property. The fact was that the omission of the words "otherwise than as a mortgagee or lessee" from the original Bill was a pure oversight, and it was the object of the amendment to replace them.

With regard to the second amendment, it was perhaps unnecessary for him to take up the valuable time of the Council in reading sections 14 and 15 as revised, seeing that they were rather lengthy.

It would be seen that, although the sections as they stood referred to transfers, they made no provision for bequests. The three previous sections provided for bequests, and all the five sections were part of the same chapter, which was headed—"Powers of Taluqdárs and grantees to transfer and bequeath," and all five sections should be taken and read together. The omission of the provision for bequests in the original sections was a mistake, which it was the object of this amendment to correct. For the rest, the amendment was in the interests of the Taluqdárs themselves, and had been made at their instance. At present if a Taluqdár were to transfer his estate to another Taluqdár who would not succeed if the transferor died intestate, the transferee would be regarded in the same light as an outsider, and the succession to the transferred property would be governed by the ordinary rules. What the Taluqdárs wished was that when the transferee was a brother Taluqdár the succession should be regulated by the rules provided in this Bill for the succession to taluqdárí estates; in other words, that the transferred property should be regarded as a portion of the transferee's taluqá. The amendment did but embody their wishes in this respect, and he trusted that it would be agreed to.

The third amendment and the fifth were the same. He was not altogether in a position to state how concubines came to be provided for in the Bill, but the word "concubine" was susceptible of a very broad interpretation, and might be held to include any dancing girl or prostitute who might be in the keeping of a Taluqdár at the time of his decease. The Taluqdárs most strongly objected to any provision being made by law for the maintenance of women of this stamp, and as ample provision had been made for the maintenance of legitimate widows of whatever degree SIR GEORGE COUPER trusted

the Council would agree to strike out all reference to concubines from the Bill.

The fourth amendment was to correct an anomaly which existed as the words stood. Under them a junior widow of the richer Taluqdárs would receive one-fourth of the amount to which the senior widows would be entitled; and a junior widow of a Taluqdár of the less wealthy classes would receive one-half the sum provided for a senior widow. The result would be that the junior widow of a poor man might receive a larger allowance, not only relatively but actually, than the junior widow of a richer Taluqdár. To illustrate his meaning, he would instance the case of a junior widow under clause (*d*) and a junior widow under clause (*e*). Under the former, a junior widow might be entitled to an allowance of 150 rupees per annum, and under the latter to 180 rupees, that was to say, that the widow of the poorer man might get 30 rupees more than the widow of the richer man. This anomaly had been explained to the Taluqdárs, and they fully concurred in the amendment under which *all* junior widows whatever the value of the estate might be, would receive one-half the amount provided for senior widows.

Clause (6) of section 28 of the Bill as it stood provided that the maintenance of a widow or daughter should continue until she married. What was proposed in substitution was that for clause (*b*) the following be substituted :—

"in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance."

The object was to avoid all reference in the Bill to the marriage of widows This amendment had been introduced at the special and earnest request of the Taluqdárs themselves, perhaps he might say in deference to their prejudices. But even if this were the case, he trusted the Council would not think it inexpedient to accede to their wishes. The fact was that up to this very moment the re-marriage of a Hindú widow was unknown in Oudh, and such a proceeding would be regarded there with the strongest aversion. Whether such marriages should or should not be encouraged or acknowledged was not at present the question. The Taluqdárs said that, bearing in mind what their feelings and sentiments in this matter were known to be, the contingency of the re-marriage of a Hindú widow should not be expressly provided for in a Bill like this, which was not of a public nature and had been introduced at their request and in their interests; and as the amendment would throw no sort of difficulty in the way of the re-marriage of a widow, Hindú or other, if she thought fit to re-marry, he trusted that the Council would pass

the amendment, and thereby confer on the Taluqdárs what they would regard as a great boon.

The Hon'ble Mr. Cockerell said that amongst the amendments to be moved by Sir George Couper as entered in the notice which had been circulated, was the following :—

"That, in line 6 of section 24, after 'thereof,' the following words be inserted: 'otherwise than as mortgagee or lessee.'"

But this had been omitted by his Hon'ble friend Sir George Couper, as Mr. Cockerell understood, at the instance of the Hon'ble Mr. Strachey. It appeared to him (Mr. Cockerell) that the insertion of these words or something of similar import was desirable, for the Council would observe that in leaving section 24 as it now stood, the effect would be to saddle a mortgagee or lessee of a Taluqdár or Grantee's estate, upon the decease of such Taluqdár or Grantee, whilst the estate remained in the possession of the mortgagee or lessee, with the burden of maintaining, within the limits prescribed by section 25, certain relatives of the deceased so long as the mortgagee or lessee continued to hold such possession. Mr. Cockerell thought such a provision, apart from its anomalous character, was open to objection on the score of the obstruction which it would create to the transfer of the possession of the Taluqdár or Grantee's estate by mortgage or lease, and that it was in this way opposed to the principle of one of the received objects of the Bill, that is, the vesting in the Taluqdár or Grantee an absolute and unfettered right of alienation of his estates. On this account Mr. Cockerell deemed it right to urge the consideration of the effect of leaving section 24 as it now stood on the attention of the Council.

The Hon'ble Mr. Strachey said that it appeared to him that the amendment to which the Hon'ble Mr. Cockerell objected was right as it stood. If the words now omitted were inserted, the section would not declare, in the case of a mortgage or lease of an estate being made, that any one would be liable to pay maintenance at all. Mr. Strachey thought the matter could always be provided by a private arrangement between the parties, and it seemed to him that the objection of the Hon'ble Mr. Cockerell was of no weight.

The Hon'ble Sir George Couper's amendments were then put and agreed to.

The Hon'ble Mr. Cockerell then moved the insertion of the words "otherwise than as lessee" after the word "thereof" in line 6 of section 24. The object of the motion, he said, was to exempt lessees from the burden of being

compelled to provide for the maintenance of relatives of their deceased lessor; and as regards what the Hon'ble Mr. Strachey had said that if they were exempted the relatives referred to would be left unprovided for, MR. COCKERELL would observe that the burden of their maintenance would properly devolve on the person receiving the rent of the estate from the lessee in possession.

As regards the mortgagee, though MR. COCKERELL doubted the expediency of imposing on him this liability, still he was in some sense, in respect to his possession of the Taluqdár or Grantee's estate, in the same position as the vendee of such estate, and the Bill avowedly contemplated attaching this liability as a condition of the transfer of the estate by sale; but in the case of a lessee, where the full value of the property leased was given in the shape of rent, the attachment of such a condition to the mere fact of temporary possession of the estate, seemed wholly unreasonable and calculated to lead to untoward results.

The Hon'ble MR. MAINE said that if a man took a lease or mortgage of the whole estate of a Taluqdár (which was the case supposed), the lessee or mortgagee ought, in MR. MAINE's opinion, to be the person primarily liable for the annuities. Indeed Mr. Cockerell's words would leave nobody liable when the whole estate was leased. The annuities were meant to be a real charge on the land, and it was not safe to make any person responsible in the first instance other than the person in actual receipt of the rents and profits. But the matter would be adjusted, as Mr. Strachey had remarked, by private arrangement, and moreover, the lessee would have his remedy against the lessor.

The Motion was put, and the Council divided:—

AYES.	NOES.
Hon'ble Mr. Bullen.	Hon'ble Mr. Cowie.
Hon'ble Mr. Shaw Stewart.	Hon'ble Mr. Gordon Forbes.
Hon'ble Mahárájá Sir Dig-Bijay Singh.	Hon'ble Rájá Shioráj Singh.
Hon'ble Sir George Couper.	Hon'ble Sir Richard Temple.
Hon'ble Mr. Cockerell.	Hon'ble Mr. Strachey.
Hon'ble Sir Henry Durand.	Hon'ble Mr. Maine.
Hon'ble the Lieutenant Governor.	Hon'ble Mr. Taylor.
	His Excellency the Commander-in-Chief.

So the motion was negatived.

The Hon'ble MR. MAINE moved that in section 11, clause 2, the words "transfer or" be omitted:

Also that in section 30, last line, the words "twenty-three" be substituted for "twenty-eight."

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved that the Bill as amended be passed. He said:—"SIR, I will not say anything more than that I think it a cause of great satisfaction that this Bill should be passed into law before Your Excellency's departure. The last important public act of Lord Canning was the bringing in of a Bill to give the force of law to the arrangements which he had made in Oudh. Similarly one of the last public acts of Your Excellency will be to give Your Excellency's assent to the Bill, the avowed object of which is to carry out and confirm the policy of Lord Canning, and which has been received by the Taluqdárs as the complete fulfilment of the engagements entered into by the British Government. I venture to assert that by the passing of this Bill Your Excellency will be remembered hereafter as one of the greatest and truest of the benefactors of the Taluqdárs of Oudh."

The Motion was put and agreed to.

ARTICLES OF WAR (NATIVE ARMY).

HIS EXCELLENCY THE COMMANDER-IN-CHIEF moved that the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Forces, be referred back to the Select Committee with instructions to report in a month. He said that since he had presented the Report of the Committee he had received notice from two very important quarters of what were considered further amendments in the Bill. Those quarters were the Government of Madras and the Judge Advocate General of the Army. And a telegram had also been received from the Government of Bombay expressing a wish that the passing of the Bill should be deferred till certain points had been stated by the Commander-in-Chief of that Presidency. His Excellency did not know what those points were, but it was only right that, whatever they were, they should receive full consideration from the Committee.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY moved that the Hon'ble Rájá Shioráj Singh and the Hon'ble Mahárájá Sir Dig-Bijay Singh be added to the Select

Committee on the Bill to facilitate the improvement of land in the North-Western Provinces.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them—The Hon'ble Mr. Maine, the Hon'ble Sir George Couper, and the Hon'ble Messrs. Gordon Forbes and Shaw Stewart and the mover.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF then said :—" SIR, I take this opportunity on behalf of this Council to express to Your Excellency the deep respect which the Council feel towards Your Excellency. I have not been authorized by any Member of the Council to express their gratitude for the unvarying kindness and courtesy bestowed on them by Your Excellency—I have not had the opportunity of consulting with the Members before addressing Your Excellency—but I am sure that I express the feeling of every Member of the Council when I say that they will never forget the courtesy and the perfect impartiality which they have always received at Your Excellency's hands."

HIS EXCELLENCY THE PRESIDENT said :—" Sir William Mansfield and Gentlemen, I thank you heartily for your consideration and kindness towards me. As the President of this Council I leave India with regret ; but for some time I have felt that broken health and long services are beginning to tell on me, and that it is time that I should relinquish the cares of State and place them in the hands of the coming Governor General."

The Council then adjourned till Friday the 22nd January 1869.

CALCUTTA,
The 11th January 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Government Central Press.—No. 2.0 L. D.—31-1-82.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 22nd January, 1869.

The Council adjourned till the 29th January, 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt of India,
Home Department (Legislative).

CALCUTTA,
The 22nd January 1869.

Government of India Central Printing Office.—No. 134 L. D.—1-9-83.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 29th January 1869.

The Council adjourned till the 5th February 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative.)

CALCUTTA :
The 29th January 1869.

G. I. C. P. O.—No. 674 L. D.—3-3-1908.—00.—C. I. W.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 5th February 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. Noble Taylor.
Major General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C.S.I.
The Hon'ble Sir George Couper, Bart., C.B.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K.C.S.I., of Balrámpúr.
The Hon'ble G. S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill for the appointment of Justices of the Peace.

DIVORCE BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to amend the Law relating to Divorce and Matrimonial Causes in India.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble SIR GEORGE COUPER presented the Report of the Select Committee on the Bill for the maintenance of the Rural Police in the North-Western Provinces.

CIVIL COURTS (BOMBAY) BILL.

The Hon'ble Mr. Shaw Stewart introduced the Bill to consolidate and amend the Law relating to the District and Subordinate Civil Courts in the Presidency of Bombay, and moved that it be referred to a Select Committee with instructions to report in a month. He said that the object of the Bill was stated at the time he obtained leave for its introduction. The object was, in substance, very nearly the same as that of Act XVI of 1868, which consolidated and amended the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs in Bengal. He would now very briefly go through the Bill and explain the principal alterations proposed. The second section proposed the repeal of a number of enactments, which would thus be removed from the Statute Book. In the sixth section an alteration was proposed by which a District Judge would be enabled, under the orders of the High Court, to hold his Court at any town in his District. The necessity of that alteration had been for some time felt, and it would add much to the convenience of suitors. By the twelfth section the Governor of Bombay in Council would, subject to the control of the Governor General of India in Council, be empowered to appoint Joint Judges in any District where it was found necessary in consequence of the state of work: at present each appointment of a Joint Judge must receive the previous sanction of the Government of India; but it was now proposed, subject to any instructions which the Government of India might issue, to empower the Government of Bombay to appoint Joint Judges from time to time as might be found necessary.

The next alteration would be found in section 22. There were at present in the Bombay Presidency three grades of subordinate Civil Judges, Principal Sadr Amíns, Sadr Amíns and Munsifs; it was proposed that there should in future be two grades of Subordinate Judges, namely Subordinate Judges of the first and second classes. The appointment of Principal Sadr Amíns is now vested in the Government, of Sadr Amíns in the High Court, and of Munsifs in the Zila Judges. It was proposed by this Bill that the appointment of all Subordinate Judges should be vested in the Government. On this point the opinion of the Government of Bombay was adverse to that of the High Court. The High Court, as at present constituted, was of opinion that the nomination of all Subordinate Judges should rest with the High Court; the Government, on the contrary, considered that the duty of appointing Subordinate Judges naturally pertained to the Executive Government of the presidency, and it was fortified in that view by the opinion of the High Court as constituted in 1864, the Judges of which advised the Government of Bombay that the appointment of Subordinate Judges had better be vested in the Executive Government. The views of the High Court and the Government of Bombay would be laid

in extenso before the Select Committee to which the Bill would be referred, and the Government of Bombay had acquiesced in the propriety of leaving the matter to the consideration of this Council, and were willing to accept any amendment which the Select Committee might think proper to recommend. It would, however, be noticed that the power of the Government would be very much limited by the second clause of section 22, which provided that no one should be so appointed who had not practised for five years as an Advocate of the High Court in India or as a Vakíl in the High Court of Judicature at Bombay, or who had not taken the degree of Bachelor of Laws in the University of Bombay, or who was not qualified for the duties of a Subordinate Judge according to such tests as might for the time being be prescribed by the High Court. It would therefore be within the competency of the High Court to secure the appointment of proper persons by fixing the scale of examination on a proper footing. In this respect the present Bill differed from that enacted last Session for Bengal, which provided that the rules for examination should be prescribed by the Government, under the sanction of the Government of India.

The next alteration was in section 23, which provided that Subordinate Judges might hold their Courts at more places than one within the local limits of their jurisdiction. The object of the alteration was to meet the case of large and sparsely populated Districts, where it was not worth while to create more than one Subordinate Judgeship, and it would enable the Subordinate Judge to hold his Court from time to time in different parts of the District, and thus make his Court easily accessible to the people.

In the matter of jurisdiction the recommendations embodied in the Bill followed very much the existing law. Subordinate Judges of the first class would have jurisdiction in all cases wherein the subject-matter of the suit did not exceed in amount or value 10,000 rupees; and Subordinate Judges of the second class would have jurisdiction up to 5,000 rupees. In Bengal, the jurisdiction of a Subordinate Judge of the first class was unlimited, and the jurisdiction of a Subordinate Judge of the second class was limited to suits not exceeding in amount or value 1,000 rupees. There had always been a great difference of practice in this respect between the Bengal and Bombay Presidencies.

In the twenty-sixth section there was a slight alteration. By the law as it at present stood, Subordinate Judges of the first class might be vested with the power of appeal in suits up to 100 rupees; it was proposed to raise their appellate jurisdiction to suits of the value of 200 rupees.

These were the only points on which the Bill proposed to alter the existing law.

There was one section which had been accidentally omitted from the Bill. In the draft Bill sent up by the Bombay Government, section 20 re-enacted the law contained in section 43, Regulation II of 1827 : it was a point on which the procedure of the Bombay Presidency was somewhat peculiar ; it provided that no Subordinate Judge should hear any suit in which the Government or any officer on behalf of the Government was the defendant. That had been the law since 1827, and it was never intended either by the Government of Bombay or the High Court that the law should be altered. By inadvertence, however, in re-arranging the draft Bill sent up from Bombay, the section containing that provision of the law had been omitted. MR. SHAW STEWART would bring the subject to the particular attention of the Select Committee with a view to the section being introduced.

The Hon'ble MR. MAINE said he was sure that the Council would at once refer his hon'ble friend's Bill to a Select Committee. The Bill was upon principle within the competence of the Bombay Legislature : it related exclusively to Bombay matters, and in regard to it the experience of gentlemen accustomed to this side of India was more likely to mislead than to guide. The learned Advocate General of Bombay had explained how it came before the Supreme Legislature. The Statute of 1861 establishing the High Courts, and the Letters Patent issued under it, taken in connection with the Indian Councils Act, reserved exclusively to the Governor General's Council the power of modifying or abridging the jurisdiction of the High Courts. That jurisdiction would be slightly affected by the present Bill, which therefore was necessarily submitted to this Council. Under those circumstances few points need be brought to the attention of the Council. MR. MAINE would observe that in section 12 the words 'general control' were ambiguous. No words had caused greater uncertainty in Act V of 1861, the Police Act. MR. MAINE understood the wish of the Bombay Government and of his hon'ble friend to be that the financial control of the Government of India should be maintained. His Hon'ble friend would correct him if, in what he was about to say, he misdescribed the proposal. There was to be a fixed establishment of District Judges corresponding to the number of districts in the Regulation Provinces of the Presidency, and in addition to this there was to be (so to speak) a Judge unattached. This Judge was to be removed from one district to another according as the state of judicial business should require. He was not to be appointed without the consent of the Government of India. But it was desired to avoid a reference to that Govern-

ment every time he was moved from one district to another. If that were what was intended, it would perhaps be better to describe the system more exactly, and to provide that the Joint Judge should in the first instance be appointed to a district with the previous sanction of the Governor General in Council, and then should be moved with the same powers to other districts until the Government of India should otherwise order.

Section 22, and the observations just made upon it by his hon'ble friend, raised the important question of patronage. The Government of Bombay, in one of the papers which had been circulated, had remarked that the subject had been much discussed by the Governor General's Council at its last sittings in Calcutta, and that the discussion had ended in a compromise which in effect continued the existing law. MR. MAINE quite concurred with the Government of Bombay in thinking that, for the reasons which it had assigned, that solution of the question was not possible in the case of Bombay. Hence, we had the Executive Government of Bombay claiming the whole of the judicial patronage on one side, and the High Court on the other, alleging that it should belong to the Court. MR. MAINE was far from denying that opportunities of strengthening the Executive Government in India should be taken when they fairly presented themselves; and though he might not have used the precise words of the Government of Bombay when it said that judicial patronage naturally pertained to the Executive, he allowed that the theory which prevailed in Western Europe was much to that effect. He apprehended, however, that the foundation of the theory was an assumption that the Executive Government was provided with something like a department of justice, which furnished it with the means of guaging the claims of candidates for promotion. That was not untrue even of England, for the Judges were practically appointed by the Lord Chancellor. He, indeed, might not in the strict sense of the word have a department under him; but then English Judges were taken from the Bar, and the rise and fall of professional reputation supplied the proper criterion of selection. In France, which bore a much closer resemblance to India, not only was there a Minister at the head of a department of justice, but he had in every Court in the country a Deputy, an Attorney of the Empire or an Advocate General, who regularly reported to him. The question then arose, was there any department of justice in India except the High Court? The truth was that the High Courts had inherited through the Sadr Court a good many administrative and executive functions from the time when the lines between executive, legislative, and judicial powers were not as strongly drawn in India as they are now. It was in virtue of this administrative character that they enjoyed their patronage. MR. MAINE perceived the Government of

Bombay was quite aware of the difficulty. For, if he understood its letter rightly, it proposed to appoint provisionally on the nomination of the High Court, until such time as a Judicial Commissioner was attached to it. There were, however, great difficulties about the appointment of such a functionary. Not the least of them was that a proposal to create the office in Bengal was made by the Lieutenant-Governor in 1863, and supported by the Government of India. But the Secretary of State vetoed it, assigning as a reason that he did not see why the existing relations of the High Court and the Executive Government should not continue. There were other not inconsiderable difficulties inherent in the plan. Might not the consequences be serious if the judicial capacity and knowledge of the Commissioner were not on a par with the highest judicial knowledge and capacity of the High Court? The Judicial Commissioner, as MR. MAINE understood, was to take off from the High Court its administrative and non-judicial functions, and among these would be that power of issuing circulars to the Subordinate Courts for the correction of errors in principle or practice, which was now usefully exercised, and also, it might be supposed, the duty of going on circuit and rebuking errors of system found to exist in the Mofussil. But it was vain to deny that to affect to correct the errors of Judges, or to rebuke their faults, was to lay down law. Might there not be danger of scandal if the highest Court of Appeal ultimately questioned that law or set it aside, and if decisions, which in effect would be rendered upon the instructions of Government, were reversed at the expense of the litigants? The subject was undoubtedly one of much difficulty, and for some time to come the Government would probably have to depend on the advice and assistance of the High Court. But MR. MAINE observed that his hon'ble friend's Bill did not throw upon the Court the duty of tendering such advice. MR. MAINE did not of course mean to say that the learned judges would really decline to give it. But, on the other hand, it was certain that the more of these administrative functions which you took away from the High Court, the greater you made the tendency of the Court to confine itself to its purely judicial duties. It appeared that the Bombay Government did not wish to be bound by the nomination of the High Court, because it might occasionally wish to place a person who had served in the Non-Regulation Provinces, in a judicial office in the Regulation Districts. MR. MAINE would suggest for the consideration of his hon'ble friend whether, after the judicial patronage had been in the first instance assigned to the Executive Government, there might not be a provision that, if the Government did not appoint within a certain number of days or weeks, the High Court should appoint. That would enable the Government to put in any person of whose claims it had a clear opinion, but if it considered that the Court had better materials

for a judgment than itself, to throw on the Court the legal obligation of appointment. Such, that is to say, would be the effect on paper; but the practical effect would be that there would be a complete understanding between the Government and the Court as to the mode of selection, and as to the persons best fitted to be selected.

Mr. Maine had only further to observe that one of the Judges of the Bombay High Court, Mr. Justice Tucker, had, if Mr. Maine rightly understood him, appealed to the Council to consider a plan of his own before it continued the existing organization of the Mofussil Courts. That plan bore a considerable resemblance to some proposals which had been published under the name of a gentleman who had formerly been Chief Justice of Bombay and was now a Member of the Council of India, Sir Erskine Perry. It was thus described by Mr. Tucker:—

"It should be considered whether an improvement might not be made in the constitution of these Courts by the amalgation of the existing Courts of District and Assistant District Judges with the Courts of Small Causes and of Principal Sadr Amíns at each Head Quarter Station, and the establishment of a single central Court in each District composed of three or more associate Judges, European and Native, with co-ordinate powers and exercising original and appellate jurisdiction.

"A tribunal thus constituted could discharge by means of divisional benches all the diversified functions of the Courts which it would supersede, and the creation of a principal Court so composed, in each of the Districts of the presidency, would remove many of the admitted evils and anomalies of the present system. Amongst other advantages it would afford an opportunity for the employment of the Junior Judges, who belonged to the covenanted Civil Service, in the trial of original suits—a great desideratum at present; and it would elevate the position of the Judges, European and Native, who might be selected outside the covenanted Civil Service, and thus open an honourable career for Native talent. A reform of this character might be introduced without any very considerable increase of expenditure, and it could scarcely fail to be productive of public benefit. It will enable Government to secure for judicial offices in the mofussil the services of successful pleaders in the High Court and also of the new class of Advocates who will have taken the degree of Bachelor of Laws in the Bombay University—men who will not, except in rare instances, accept a Subordinate Judgeship, whatever may be the the rate of pay which may be ultimately fixed for these appointments."

These two projects of Sir Erskine Perry and Mr. Tucker would no doubt require to be considerably modified in application, but Mr. Maine had long thought that the reform of the lower Appellate Courts, which no doubt was much needed, would ultimately take something like this shape. Mr. Justice Tucker had, however, not observed or not stated that the change could only be carried out by Act of Parliament. Statute 24 & 25 Vic., cap. 54 reserved the offices

mentioned in the first two classes of the second head of the schedule to members of the covenanted Civil Service, except on conditions that, practically, could not be fulfilled. The better opinion would seem to be that this enactment prohibited the Indian Legislature from abolishing the present District Civil Courts. But at all events it would prevent the Government from placing in any Court substituted for District Courts the class of persons contemplated by Mr. Tucker. That being the state of the law, MR. MAINE did not think that these proposals could at present be discussed in this country with profit.

The Hon'ble MR. SHAW STEWART said that, with reference to the question put to him by the Hon'ble Mr. Maine, he would give the best explanation in his power. As regards the twelfth section it was the intention of the Bill that the financial control of the Government of India should be strictly maintained. In paragraph six of the letter from the Government of Bombay the circumstances under which this provision was proposed were stated at length. The present law, Act XXIX of 1845, required the consent of the Government of India to the appointment of a Joint Judge. Those words were construed by the High Court to mean that the consent should be given before each and every such appointment was made; it had therefore been found impossible to transfer a Joint Judge, even when the sanction to his appointment had been received, from one jurisdiction to another. MR. SHAW STEWART thought that the proposal of the Hon'ble Mr. Maine would have the effect of giving to the Government of Bombay all that was required to enable the Government to move a Joint Judge from one district to another.

As regards the twenty-second section of the Bill, MR. SHAW STEWART thought that the Hon'ble Mr. Maine had somewhat misunderstood the views of the Government of Bombay. As MR. SHAW STEWART understood it, the Bombay Government preferred to have it distinctly stated that the Government was to have the appointment of Subordinate Judges. The words referred to by the Hon'ble Mr. Maine were as follows:—

> "Although, however, His Excellency in Council thinks that it is necessary for the Government to retain the power of appointing to the higher class, he is yet willing, in the absence of a responsible adviser such as a Judicial Commissioner, to accept the nominations of the High Court to the higher grade appointments within the second class."

M. SHAW STEWART understood that to mean that, if this Council considered that the High Court ought to have a share of the patronage, the Government of Bombay was willing to accept an alteration so as to allow the High Court to nominate, and the Government to appoint, Subordinate Judges of the lower grade, the Government having absolute power of appointment in the

case of Subordinate Judges of the higher class, which was now the law in Bengal under Act XVI of 1868. The Government of Bombay, as he understood it, would prefer the Act to stand as in the Bill; but it was considered that the High Court ought to have the power of appointment, the Government was willing to have the alteration made: if made, it would then clearly be stated to be the duty of the High Court to nominate, and no such difficulty, as that anticipated of the High Court refusing to nominate, could occur.

He regretted that he was not able to speak as to the appointment of a Judicial Commissioner; he was not aware how that matter stood, or if the Government of Bombay had any prospect or intention of making such an appointment. If, however, the alteration referred to above were made, it would probably be necessary to alter the law as soon as a Judicial Commissioner was appointed, and to let the nomination come from the Judicial Commissioner instead of from the High Court.

The Hon'ble SIR RICHARD TEMPLE said that he noted with satisfaction the assurance given by the Hon'ble Mr. Shaw Stewart that there was no intention in the Bill of at all weakening the financial control of the Government of India He hoped that attention would continue to be given to this in Select Committee. It was also satisfactory to see that the Bill clearly affirmed the authority of the Local Government in respect to the patronage of appointments. For with all deference to what had fallen from the Hon'ble and learned Member, Mr. Maine, and with all respect to the several High Courts, SIR RICHARD TEMPLE believed it to be essential that the hands of the Executive Government should be kept strong as much in regard to judicial as all other patronage; and he hoped that nothing would be enacted to materially impair the power of the Local Government in this important particular.

The Hon'ble SIR HENRY DURAND said that the Hon'ble Mr. Shaw Stewart had, by an explanation which he had given him on the subject, removed a doubt which existed in SIR HENRY DURAND's mind with reference to certain sections of the Bill which empowered the High Court to suspend Judicial Officers without the authority of Government. He had learnt from the Hon'ble Mr. Shaw Stewart that Political Officers exercising judicial functions under the Bombay Government, and those of Justices of the Peace, would not be affected by the provisions of the Bill. To SIR HENRY DURAND this assurance that the sections to which he had referred did not bring those officers under the direct action of the High Court of Bombay was very satisfactory, for he could conceive circumstances under which it would be extremely inconvenient that Political Officers who exercised high judicial functions should, at the will of the High Court, and

without the sanction of the Government of Bombay, be subject to the provisions of the sections to which he had alluded; but with the assurance of the Hon'ble Mr. Shaw Stewart that the sections did not touch such officers, SIR HENRY DURAND had nothing to observe but that the information removed the objection which he might otherwise have had to the sections.

The Motion was put and agreed to.

EMIGRATION OF COOLIES BILL.

The Hon'ble MR. STRACHEY moved that the Hon'ble Mr. Gordon Forbes be added to the Select Committee on the Bill to amend the Law relating to the emigration of Native labourers.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay—the Hon'ble Mr. Maine, the Hon'ble Sir Richard Temple, the Hon'ble Messrs. Cockerell, Gordon Forbes and the Mover.

The Council adjourned till the 12th February 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 5th February 1869.

Govt. of India Central Printing Office.—No. 171 L. D.—23-4-34.—70.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament 24 & 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 12th February 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K P., G.C.S.I., *presiding*.
His Honour the Lieutenant-Governor of Bengal.
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. Noble Taylor.
Major General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C.S.I.
The Hon'ble Sir George Couper, BART., C.B.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahadur, K.C.S.I., of Balrámpur.
The Hon'ble G. S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill for the appointment of Justices of the Peace be taken into consideration. He said that this Bill was originally necessitated by an Act of Parliament passed in 1865. The Statute 28 Vic., c. 15, sec. 3 empowered the Governor General in Council to re-distribute, by notification, various jurisdictions of the High Courts, and in particular to alter the local limits of the original criminal jurisdiction which they exercise over European British subjects. The Justices of the Peace to whom the measure referred had no functions outside the presidency towns except those of dealing with charges against European British subjects, of fining them in certain cases and committing them for trial in others. When the notification had been issued under the Statute of 1865, a question arose whether a Justice of the Peace could commit to any High Court

except the one under whose seal his commission issued. The learned Judges differed on the point, and legislation became imperative. As the Bill was originally framed, it merely removed this particular difficulty, and enabled the High Courts to commission any Justice of the Peace having power of commitment to such Courts. The Judges, however, of two of these Courts on receiving the Bill, asked why they should not be relieved from the burden of issuing commissions to Justices of the Peace? They had no option in the matter; they were obliged to obey the requisition of the Government, and the duty seemed an unjustifiable waste of their time. The Select Committee could not but adopt such a suggestion emanating from such a quarter, and the Bill had been amended in that sense. MR. MAINE would go through the sections in connection with his amendments, which had all been assented to by the Committee. It would be observed that the third section enabled the Governor General in Council to appoint Justices of the Peace for the whole of British India. There was no intention (as would be inferred from the composition of the Committee) to confer on the Supreme Government the power of usurping any of the legitimate functions of the Local Governments. But the Council would see that under the section of the Act of Parliament to which he had referred, the local limits of the original criminal jurisdiction of the High Courts might be constantly shifting. For example, European British subjects were committed from certain portions of the Central Provinces to the High Court of Bombay. But as the railway from Jubbulpúr advanced westward, it might be more convenient to have them committed to the High Court of the North-Western Provinces. The Council would at once perceive the great convenience there would be in having an authority whose appointments would be independent of all limits and would be valid all over India. The words at the end of the first clause of the section MR. MAINE proposed to omit, and to embody their substance in a separate section. The objection had been taken by a high authority, that the Bill, as it stood, had an air of legislating for the Native States, which was not within the competence of the Council whose legislative powers as to such States were confined to British servants of the Crown and European British subjects. By the fourth section the Governor General in Council had a power collateral to that of the Local Government of appointing Justices of the Peace for Calcutta. This was done on account of the special relation of the Government of India to Calcutta. But MR. MAINE apprehended that the power would be seldom exercised. The fifth section merely conferred on the Justices of the Peace to be appointed under the Act all the powers and authorities now belonging to the present Justices of the Peace. But he proposed to alter the words "make commitments of" into the words "have power to commit for trial."

After section 5 MR. MAINE proposed to introduce the new section relating to the Native States. The Council was not competent to legislate formally for these States, but it could empower Justices of the Peace appointed for other parts of India to deal with charges made in those States against certain classes of persons. The Justices thus acting in Native States were to be servants of Government, for it was desirable that none but Political Officers should exercise these functions. The reference to Christian subjects of Her Majesty in the last part of the section was introduced, because the Act of Parliament of 1865 made provision for such Christian subjects being placed under the criminal jurisdiction of the High Courts.

The next two sections related to the oaths which Justices of the Peace were to take. They were left in the Bill by a majority of the Committee, and MR. MAINE was afraid he was the only dissentient. He did not, however, intend to move to omit them, because he did not think the question of very great importance, and he admitted that the arguments were nearly evenly balanced. MR. MAINE thought that too many of such oaths were taken in this country; and, as the characteristic function of a Justice of the Peace beyond the Presidency Towns was to deal with Europeans, who (he was afraid) were too often European vagabonds, there did not seem any reason for imposing any additional burden on their consciences. On the other hand, there was the analogy of the law at home; and it must be allowed that the chief reason for maintaining the institution of separate Justices of the Peace was that it might be the nucleus of a better system for disposing of the minor crimes of European British subjects. If the Justices acquired such functions, it might not be unreasonable that they should take fresh oaths. MR. MAINE, however, did not presume that his hon'ble friends wished the existing Justices to be sworn over again, and therefore "no such person" in section 7 must be altered into "no person other than a Justice of the Peace now acting under a commission."

The next section, of which the language was taken from the old law, must be altered since it appeared that some of the Local Governments had now no Home Office, its duties having probably been distributed among other Departments. The last section of the Bill merely conferred on existing Justices the same powers which they would enjoy if appointed under the new law. But on the principle of the omission in section 3, the last words of the first clause must be omitted "and for the dominions of the said Princes and States."

MR. MAINE trusted that the Council would pass the Bill into law, and that it would be found to substitute a simple and convenient system, for one which

was extremely cumbrous, and for which little could be said except that it existed.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved the following amendments :—

1. That, in section 3, the words 'and the dominions of Princes and States in India in alliance with Her Majesty' be omitted.

2. That, in section 5, line 4, the words 'full power and' be omitted, and that, for the words 'make commitments of,' line 5, the words 'have power to commit for trial' be substituted.

3. That, after section 5, the following section be added :—

'6. All persons being servants of Government appointed by the Governor General in Council to act as Justices of the Peace for the whole of British India,

and all persons being servants of Government appointed by a Local Government to act as Justices of the Peace for the territories subject to such Government other than the towns aforesaid,

shall, so far as regards European British and Christian subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, have power to act as Justices of the Peace and to commit such subjects for trial according to law.'

And that the numbering of the subsequent sections be altered.

4. That, in section 6, line 1, for the words 'no such person,' the following be substituted :—

'no person other than a person now acting as a Justice of the Peace under a commission.'

5. That, for section 7, the following section be substituted :—

'The subscriptions of such persons to the said declarations shall be deposited with and kept by such officer as the Governor General in Council or the Local Government (as the case may be) shall from time to time appoint.'

6. That, in section 9, lines 9 and 10, the following words be omitted :—

"and for the dominions of the said Princes and States."

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble SIR GEORGE COUPER asked leave to postpone his motion that the Report of the Select Committee on the Bill for the maintenance of the Rural Police in the North-Western Provinces be taken into consideration.

Leave was granted.

IMPROVEMENT OF LAND (N. W. P.) BILL.

The Hon'ble MR. STRACHEY moved that His Excellency the Commander-in-Chief, the Hon'ble Mr. Taylor, and the Hon'ble Sir George Couper be added to the Select Committee on the Bill to facilitate the improvement of land in the North-Western Provinces.

The Motion was put and agreed to.

The Council adjourned till the 19th February 1869.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 12th February 1869.

Government of India Central Printing Office.—No. 172 L D.—11-7-3 4.—70.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 19th February 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding*.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Raja Shioraj Singh, C. S. I.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Maharaja Sir Dig-Bijay Singh, Bahadur, K. C. S. I., of Balrampur.
The Hon'ble G. S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble SIR GEORGE COUPER moved that the Report of the Select Committee on the Bill for the maintenance of the Rural Police in the North-Western Provinces, be taken into consideration. He said that, for the purposes of this Bill, landowners in the North-Western Provinces might be divided broadly into two classes; landowners who paid revenue to Government and landowners who held their lands rent-free. By far the greater majority of landowners belonged to the first of these classes. At the time of making a settlement of the land-revenue with landowners paying revenue to Government, a percentage on their rent was fixed in discharge of their obligation to maintain the Rural Police. In 1855 this cess was fixed at $2\frac{3}{4}$ per cent. on their rent; but

the Government had no inherent power to levy this cess from landowners not paying revenue to Government, and therefore Act II of 1865 was passed to enable the Government to levy a cess of $2\frac{3}{4}$ per cent. on the amount which they would have had to pay if they had not been holding their lands rent-free. For the fact of their holding their lands rent-free was clearly no reason why they should be exempt from the payment of Police charges imposed on the less fortunate class of landowners.

Since then it had been found necessary, in the case of landowners paying revenue to Government, to raise this cess to $7\frac{3}{4}$ per cent. on their rent; but as the amount to be paid by landowners not paying revenue to Government was fixed by Act II of 1865 at $2\frac{3}{4}$ per cent. only, on what SIR GEORGE COUPER might call their estimated rent, it could not be raised to the amount now levied from landowners paying revenue to Government, namely, to $7\frac{3}{4}$ per cent.

The object of the Bill, therefore, was to place both classes of landowners on precisely the same footing in this respect. If it were found necessary hereafter to raise the precentage on the rent of landowners paying revenue to Government, the percentage on the estimated rent of landowners not paying revenue to Government would be proportionately raised. If, on the other hand, it were found possible to reduce the percentage in the case of landowners paying revenue to Government, the percentage to be paid by landowners not paying revenue to Government would be reduced proportionately.

The opportunity had been taken to make one or two amendments in Act II of 1855. The fourth section of that Act, which was taken from still older enactments, provided that landowners shall furnish certain information required for the purposes of the Act in connection with this cess, and on failure to do so, the landowner was put, so to speak, beyond the pale of the law; for, on the default of a tenant, he was precluded from distraining his crop, from suing him in the Civil Courts, and from taking any other measures for the enforcement of his rights. Instead of this legal ostracism, it had been thought better to provide that, if the landowner refused to give the information required by the law, he should be liable to a specific fine, the amount of such fine to be devoted to the purposes of the Act.

Section 11 of Act II of 1865, was to the following effect:—

"Every proprietor or other person in whom the right of nomination of village watchmen is vested, shall nominate a fit and proper person within fifteen days of the occurrence of any vacancy in the office of watchman on his estate; and the person so nominated shall, after due

enquiry, be appointed or rejected by the Magistrate of the District at his discretion, or by any officer authorized by him in that behalf. In default of a nomination within fifteen days of the occurrence of a vacancy or of the rejection of a nominee, the proprietor or other person in whom the right of nomination is vested shall be held to be guilty of disobedience to lawful authority, and shall be liable, by order of the Magistrate, to a fine not exceeding rupees fifty, and in default of payment to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate of the District shall proceed to appoint a person to the vacancy."

It had been thought sufficient, for all practical purposes, to enact that on the neglect of the landowner to make a nomination, the Magistrate should proceed to fill up the vacancy. So much therefore of this section, as provided a specific punishment for failure to nominate on the part of the landowner, had been struck out of the Bill. For the rest the Bill was merely an embodiment of Act II of 1865 and Act II of 1866, both of which it repealed.

There was a matter of detail in which the Select Committee had thought it right to make a slight alteration in the Bill as it originally stood. It was provided in the nineteenth section that, in the event of the nomination of a village watchman by the landowner being rejected, the Magistrate should at once fill up the vacancy. The Select Committee thought this tantamount to vesting all such appointments bodily in the hands of the Magistrate, who had only to reject the landowner's nominee to appoint whom he would. It was therefore provided that, in the event of his first nomination being rejected, the landowner might make a second nomination within fifteen days.

The motion was put and agreed to.

The Hon'ble Sir George Couper also moved that the Bill as amended be passed.

The motion was put and agreed to.

ARTICLES OF WAR BILL.

His Excellency the Commander-in-Chief presented the final Report of the Select Committee on the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

POLICE SUPERANNUATION FUNDS' BILL.

The Hon'ble Sir Richard Temple, in moving for leave to introduce a Bill to abolish the Police Superannuation Funds, said that, as the Council were aware, the various Police Forces in India had certain deductions made from the pay of the men, who became thereby entitled to a certain scale of pensions. This arrangement had been found, however, to give an immense deal of trouble

in the making up of the accounts of every man, and was otherwise inconvenient. It was now proposed to abolish these Funds and to guarantee on behalf of the Government the pensions which the men would otherwise have received; they would thereby get greater security for their pensions, and would regard the measure as quite satisfactory; and, on the other hand, the financial convenience of the Police Department would be consulted. The pay of the men would have to be revised so as to bring out approximately an amount equal to the nett amount which they now received after the present deductions. He had, therefore, with the full concurrence of his Hon'ble colleague in charge of the Home Department, brought in this Bill.

The Motion was put and agreed to.

EMIGRATION OF COOLIES' BILL.

The Hon'ble Mr. Gordon Forbes presented the Report of the Select Committee on the Bill to amend the law relating to the Emigration of Native Labourers.

The Council adjourned till the 26th February 1869.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl.

for making Laws and Regulations.

Calcutta:
The 19th February 1869.

G. I. C. P. O.—No. 674 L. D.—3-3-1908.—000.—H.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 26th February 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I. *presiding.*

His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.

The Hon'ble G. Noble Taylor.

Major-General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C.S.I.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádúr, K.C.S.I., of Balrámpúr.

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. N. Bullen.

DIVORCE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to amend the law relating to Divorce and Matrimonial Causes in India be taken into consideration. He said :—" This measure is obviously one of great social importance; but I do not think I need trouble the Council at any wearisome length with an analysis or description of its provisions. It is substantially a consolidation measure. It puts together the English Statute-law on the subject in a more orderly form, and, I trust, in clearer language, and it incorporates the principal recent decisions of the Divorce Court. But in the main its principles are those of the statutes regulating the jurisdiction of the English Court of Divorce and matrimonial causes. I shall therefore probably discharge my duty to the Council by calling its attention to the points in which

the Bill differs from the English law, and to the provisions in it which are specially characteristic of India.

The first important section which requires remark is the second. In connection with it, I will take leave to remind the Council of the history of the Bill. It has been seven years before the Council of the Governor General. On examining the parliamentary debates upon the English Divorce Act, I find it was then distinctly contemplated that a measure of divorce relating to India should be passed either in India or at Home. The Secretary of State appears to have preferred Indian legislation, and directed the Government of India to submit to this Council a Bill corresponding with the English Act. It was in Sir H. Harington's hands when I came out here in 1862, and he transferred it to me. But I did not carry it through more than a single stage on account of the doubts which I felt myself, and which were strongly stated by some of the Judges, as to the power of this legislature to enable the Courts to decree divorces of persons married in England which the English Courts would recognise. Though the matter is somewhat technical, I must attempt to explain to the Council what the legal difficulties were. At that time the opinions of lawyers were much divided as to the relative authority to be attached to two cases which have become famous in connection with this subject. *Lolley's case*, which is considerably the older of the two, was as follows :—Lolley was a man who married a wife in England and took her to Scotland, where he obtained, or rather forced her to obtain, a divorce from the Scottish Consistorial Court on the ground of his adultery. He then returned to England and married again. Afterwards he was indicted for bigamy and convicted, the point whether he had been legally divorced being at the same time reserved for the consideration of the Judges. The Judges decided that the conviction must stand, in terms which were long considered to establish that a foreign Court could not dissolve a marriage that had been solemnized in England. Long afterwards, in 1835, the House of Lords decided the case of *Warrender* v. *Warrender*. Here the appellant and respondent, Sir George and Lady Warrender, had both a Scottish domicile, but the marriage had been celebrated in England and the adultery was alleged to have been committed in France. Lord Brougham gave judgment in terms which would appear to sanction the rule which seems to be the general rule of Private International Law, that personal status follows domicile, and that the question whether a man is a minor, or a married man, or a divorced man, is to be determined by the law of the country in which he is domiciled. Lord Brougham, who had been Counsel for Lolley, spoke in *Warrender* v. *Warrender* with much doubt of the authority of *Lolley's case*, and it might almost be considered to have been overruled, if it had not

been for the observations of Lord Lyndhurst, who followed Lord Brougham, and who, while agreeing with the decision of the House, stated that he did not intend in any way thereby to throw discredit on the older decision. Hence lawyers had to decide between two decisions which are certainly difficult to reconcile. The Government of Lord Elgin wrote to the Secretary of State, who admitted the weight of the doubts which had been felt in India, and stated that Her Majesty's Government would bring a Bill into Parliament. After waiting two years, Sir John Lawrence's Government, which had been much pressed by the applications of East Indians for relief, begged the attention of Her Majesty's Government to the subject, but was told that a Royal Commission was about to be appointed at Home to investigate the whole subject of marriage and divorce in India and the colonies, and that there could be no English legislation till its report had been received. Another interval of two years occurred, and the Government of India again pressed the subject on the Queen's Government. They were told in reply that the Commission had found the subject of marriage so difficult that there was no near prospect of their entering upon that of divorce. We were therefore requested to legislate to the extent of our power, or in other words to exclude from our measure persons who had been married in England, large and increasing as the class appeared to be. In this rather unsatisfactory state of things the Select Committee recommenced its labours, but it turned out that, just at the same time, the House of Lords was giving a decision which appeared to incline the balance against *Lolley's case* and in favour of the doctrine of *Warrender* v. *Warrender*. This was *Shaw* v. *Gould*. Here the judgments of Lord Cranworth and Lord Westbury appeared to lay down the law in much the same terms as Lord Brougham—that a foreign Court could dissolve an English marriage when the parties were domiciled abroad. Section 2 of the Bill, however, does not make it a condition of jurisdiction that the petitioner should be domiciled, and it is with a view of explaining this omission that I have made this long statement. In the first place, though a man's domicile of origin is easily proved, a new domicile is proverbially difficult to establish. It depends partly on length of residence in the foreign country, partly on intention to stay there. I myself heard the present Lord Chancellor, Lord Hatherley, describe domicile as a function of time and intention, and when an eminent Judge defines it in terms half mathematical and half metaphysical, it may readily be inferred that it is not a thing easy to be proved. Moreover, as the House of Lords has recently remarked, the question of domicile hardly ever arises with regard to living persons. Now, not only will the persons who will petition under this measure be living, but they will have a clear intention of not staying permanently in India. A still further perplexity arises from

the fact that the substantive law of domicile in India has recently been altogether changed. The following are the provisions of the Indian Succession Act on the subject of new domicile :—

"A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's Civil or Military service, or in the exercise of any profession or calling.

Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration."

Now this domicile under the Succession Act is a forensic domicile. It is a domicile artificially created as a foundation for rights and remedies. But it is not the domicile of Private International Law, nor is it the domicile spoken of by Lord Brougham, Lord Cranworth, and Lord Westbury. The difficulty is so great that the Select Committee might have found it insuperable but for Lord Colonsay's modification of the law as laid down by the other Law Lords in *Shaw* v. *Gould*.

"It was said that a foreign Court has no jurisdiction in the matter of divorce unless the parties are domiciled in that country; but what is meant by '*domicile?*' I observe that it is designated sometimes as a *boná fide* domicile, sometimes as a *real* domicile, sometimes as a *complete* domicile, sometimes as a domicile *for all purposes*. But I must, with deference, hesitate to hold that on general principles of jurisprudence, or rules of international law, the jurisdiction to redress matrimonial wrongs, including the granting of à decree of divorce *à vinculo*, depends on there being a *domicile* such as seems to be implied in some of these expressions. Jurisdiction to redress wrongs in regard to domestic relations does not necessarily depend on domicile for all purposes. If the decisions to which I have referred proceeded on the ground that the resort to the foreign country was merely for the temporary purpose of giving to the Courts of that country the opportunity of dealing with the case according to their own law, and thereby obtaining a dissolution of the marriage, and that such was the object of both parties, these decisions might be said to derive support from principles of general law, on the ground of being in *fraudem legis*. But if you put the case of parties resorting to *Scotland* with no such view, and being resident there for a considerable time, though not so as to change the domicile for all purposes, and then suppose that the wife commits adultery in *Scotland*, and that the husband discovers it, and immediately raises an action of divorce in the Court in *Scotland*, where the witnesses reside, and where his own duties detain him, and that he proves his case and obtains a decree, which decree is unquestionably good in *Scotland*, and would, I believe, be recognized in most other countries, I am slow to think that it would be ignored in *England* because it had not been pronounced by the Court of Divorce here."

I apprehend that Lord Colonsay has here described with exactness the position of Europeans in India. They are resident here, but their residence falls somewhat short of domicile; their duties keep them here, and under the provisions of the Bill they can only invoke the new jurisdiction when the adultery is committed in India. I have much confidence that the English Courts will recognise Indian adjudications under this measure. There seems to me to be much weight in the dictum of a high authority, Dr. Lushington, in *Conway* v. *Beazley*. He doubted—

"whether it was the intention of the Judges to decide a principle of universal operation absolutely, and without reference to circumstances, or whether they must not, almost of necessity, be presumed to have confined themselves to the particular circumstances that were then under consideration."

The truth is that the hesitation of English Judges to recognise foreign divorces has manifestly arisen from the fact that the divorces before them had in all cases been Scotch divorces, from their feeling that Scotland was very near to England, and perhaps from a suspicion that, as Scotch marriages are easily contracted, so Scotch divorces aee easily obtained. But let the Council consider whether the sort of divorce to which the English Courts are likely to object can be obtained in India under this measure. First of all, the parties must come to India, which is a very different thing from going to Scotland; then the adultery or other offence must be committed in India. In a case of an improper divorce there would almost inevitably be collusion or connivance, and, moreover, collusion or connivance under very suspicious circumstances. All the careful machinery of the Bill for the detection of these would come into play, and the judgment of divorce would never be given. So such for persons married in England. Over all the other classes indicated in section 2, we have power to give the Courts a complete jurisdiction.

Section 4 raises a question which I will not call doubtful, but upon which some of the persons who have addressed the Committee are divided. It is the question whether the District Courts shall be allowed a jurisdiction in divorce. The main reason why the Select Committee had given this jurisdiction, was that the refusal of it would amount to a denial of relief to large classes of persons affected by the Bill. It would be a mere mockery of East Indian clerks in distant cities, and of Native Christians in Mofussil villages, to tell them to come to the High Courts in the presidency-towns for judgments of divorce. It is, however, said that the District Courts are not equal to these duties. The argument is one which I look upon with great distrust. If it be established that certain new legal rights and remedies should be created for the benefit of

any class of Her Majesty's subjects, and the Indian Courts are incompetent to administer them, the proper inference seems to be that the Courts should be reformed, not that the rights and remedies should be refused. But the charge is, in truth, often hastily made, and, moreover, there is nothing specially difficult in questions of divorce. They are important on account of their social importance, but they for the most part involve very simple questions of fact. The Lieuteneant-Governor of the Panjáb has observed that he does not think that his Deputy Commissioners are equal to the new jurisdiction. He has apparently not noticed that, under the interpretation-clause, the District Judge is, in a Non-Regulation Province, a Commissioner, and I really cannot see why the Commissioners in the Panjáb cannot dispose of these cases. Only the other day two gentlemen with military titles decided a case successively, in which the Government were interested to the extent of a million sterling, and in which very difficult questions of public law were involved; and their decree was confirmed by the Chief Court. If, however, it once be granted that the District Courts must have jurisdiction, their exercise of it is by the measure fenced round with many safeguards. The High Courts can call up at any time any case that presents special difficulty. Nor do we provide a mere appeal from their decisions, because the parties may be poor or they may have an understanding with one another and thus there might be no appeal. We have applied to the decrees of the District Courts the same principle which is applied in India to capital sentences, and have required that they be confirmed by the High Court, which has full powers of calling for fresh evidence. Sir Donald Macleod has also remarked on the provision in section 7, that the principles and rules of the English Divorce Court are to be followed by the Indian Judges, and he remarks that the Panjáb officers have no time to master these principles and rules. It is necessary that I should explain that this Bill is substantially a Code; it is not easy to conceive a point arising which it will not dispose of. There was, however, no obligation imposed on the Committee to construct a Code, and therefore it is possible that a question may arise which is not expressly provided for. To meet such a case, it is necessary to indicate the source whence the rules applicable to it are to be taken. There is, however, no more hardship in having to look for that source than in having to search for principles in other departments of law, which the Panjáb Courts must constantly be doing. I imagine, too, that any specially difficult case will always be called up by the High Court.

I have some remarks to make on section 10, which I will postpone; but I will now call attention to the second clause of the section, which provides that a wife may have a divorce on the ground that since the marriage her

husband has exchanged Christianity for some other religion, and has gone through a form of marriage with another woman. The provision has been necessitated by a judgment of the High Court at Madras. The facts of the case are very strange, and are almost as curious an illustration of the effect of our rigid legal ideas upon loose Native notions of custom, as was the discovery which we made the other day as to the state of the law on Native marriages. A Hindú was converted to Christianity, and, as a Christian, married a Christian girl. He then reverted to Hindúism, and it seems to have been found out that he could be re-admitted to caste on certain conditions, the principal of which was, as I am informed, that he should submit to have his tongue pierced with a red-hot iron. He then proceeded to marry one or more Hindú wives, and was indicted under the Penal Code for the offence which corresponds with English bigamy. The High Court, however, decided that, having relapsed into Hindúism, he re-acquired his rights of polygamy. The Bishop of Madras and the Missionaries of Southern India are most anxious that this decision should be set aside by legislation. I apprehend, however, my Lord, that, according to the ideas which now prevail as to the almost reverential respect which is due to what a part of the Natives of this country declare to be their custom, social or religious, it is not safe for this Council to revise legislatively the law of the High Court, or to deny the proposition that a Native of India may acquire a right to a plurality of wives through the actual cautery of the tongue. But I think I shall have the whole Council with me in saying that we can and ought to relieve the wife from the marriage-bond. It will be allowed that, from the Christian point of view, the husband has been guilty both of adultery and desertion. But the adultery is not legally adultery owing to the decision of the Madras Court, nor is there desertion, since the husband may always say that it is open to the Christian wife to live in his house with the others.

At this point, it is proper that I should advert to an omission which the Select Committee sanctioned, but which has been much complained of by several ladies and gentlemen who have addressed me in private letters. They ask that what they term "a validity clause" may be inserted in the Bill. I presume the complaint is that we do not propose to confer on the High Court the special jurisdiction which is vested in the Divorce Court by a separate Statute, 21 & 22 Vic., cap. 93. That Statute enables the Court to make declarations of the validity or invalidity of a marriage, or of the legitimacy or illegitimacy of children. There is no doubt that, so far as regards that branch of it which relates to marriage, its principal object was to establish marriages of which the validity had been doubted, and thus to quiet scrupulous consciences and to settle

rights. It can hardly be said to have been designed as a contrivance for making decrees of nullity on grounds less material than those set forth in the Bill. The Select Committee considered the matter carefully, and refused to create the jurisdiction out of deference to the authority of Chief Justice Sir Barnes Peacock and Mr. Justice Norman. The latter has given his reasons at length—

"To the question whether it is desirable to add a clause to the Indian Divorce Bill, empowering the Courts to make declarations of legitimacy, and of the validity and invalidity of marriages, I would answer in the negative.

Such decrees would not have an extra-territorial operation. They would not determine conclusively the status of the parties, or be necessarily accepted as binding on English Courts with reference to questions as to the inheritance of land.

The decrees would not be like decrees *in rem,* binding and conclusive on all persons even in this country. The rights of parties not cited would have to be saved, as is done by the 8th section of the 21 & 22 Vic., cap. 93.

We have in this country considerable experience on the subject of suits for declarations of right. And, for myself, I have no hesitation in saying that such a suit against a person who has no actual present interest in the matter to be litigated, is a very unsatisfactory mode of bringing a question before the Court for adjudication. There is sometimes no real contest. The parties against whom the declaration is sought do not feel any deep interest in a question which at the time affects them but very remotely. In such cases, at least, the Court has to act on imperfect information, even if no fraud is practised upon it.

If the defendants or parties cited do take an interest in the matter, it appears to me that they are subjected to a great hardship in being compelled to litigate, perhaps at great expense, a question in which at the time they have not, and possibly may never have, any actual pecuniary interest, and the answer to which depends on facts of which, in all probability, they have no personal knowledge."

I have always, myself, ventured to think this jurisdiction of doubtful expediency even in England. There is always danger in enabling a Court to exercise its powers when there is not before it any distinct issue or dispute between parties. When, however, it is considered that, were the jurisdiction to be conferred on the High Courts, their decrees would not operate extra-territorially, and a person re-marrying on their authority might be indicted for bigamy in England—when, further, we remember that the witnesses would constantly have to be examined under commission in England, and that the persons who would have to be cited to defend their rights would constantly be living at the other end of the world—there can be little question that the Select Committee has acted prudently in denying such powers to the Indian Courts.

In saying this, however, I do not mean to say that several of the letters I have received do not tell a very unhappy story. I can only reply that to give the writers relief does not fall within the principles and purposes of this Bill.

I merely call attention, in passing, to sections 16 and 17, which describe the securities against collusion and connivance provided by the measure. In the case of decrees by the High Court, they are to be in the first instance, as in England, decrees *nisi*, and are not to be made absolute for six months. Decrees for dissolution and of nullity by the District Courts are not to receive confirmation before six months have elapsed, during which interval evidence as to collusion or connivance, if it is forthcoming, can be collected.

There was a slight difference in the Committee as to the last clause of section 19, though the dissentients have not thought the matter of sufficient importance to record their dissent. The High Courts inherit from the Supreme Courts, which in their turn inherited from the Ecclesiastical Courts, a jurisdiction to make decrees of nullity of marriage on the ground of force or fraud. It is very rarely put into exercise. But some gentlemen thought that force or fraud should be specified as distinct grounds of nullity, as is done in the New York Code. The objection is that force is quite unknown among Europeans, and equally so among Native Christians. There are many here who can speak with more knowledge than myself on the point. But I am told that what appears to us the extraordinary publicity of Native marriages is a complete security against force. As regards fraud, the Select Committee would have had a difficult undertaking in hand if it had tried to define the kind of fraud which should invalidate a marriage. Absolute personation of one man by another, which is the only fraud indicated in the Canon Law (from which the jurisdiction has apparently descended), is practically impossible in modern society. As to other kinds of fraud, take a very strong case. If a ticket-of-leave man comes to India from Australia, and, concealing his antecedents, marries an European woman, is the marriage to be set aside? A more cruel imposition can scarcely be imagined, and yet I apprehend that modern ideas would require the marriage to be maintained. The Select Committee, however, did not wish to take away from the High Courts any jurisdiction which they at present possess. If those Courts are ever called upon to exercise it, they will discover and apply for themselves the proper existing limitations.

Section 21 embodies a limited application of a principle which lawyers would gladly see engrafted on English law. It is the principle that marriages contracted in good faith, but declared to be null, shall be maintained as far as possible. The section, which is taken textually from the New York Code,

and resembles the provisions of the French Code and the numerous systems descended from Roman law, permits the children to succeed as legitimate to the property of the party competent to marry, and thus relieves them, *pro tanto*, from the stigma of illegitimacy.

On sections 56 and 57 it is merely necessary to remark that this Legislature has, strictly speaking, no power to limit the appeal to Her Majesty in Council. Practically, however, it is found that the Privy Council will respect the limitation imposed by local legislatures on appeal, when such limitations are reasonable. Section 57 permits the parties whose marriage has been dissolved to remarry if no appeal has been presented to the Privy Council. But theoretically it is conceivable that an appeal might be presented after six months. There is but little doubt, however, that the Privy Council would maintain the restrictions of the Bill under its own rules.

I now return to section 10, of which I have postponed the consideration for reasons which the Council will have divined. The section, with the exception of the clause on which I have already commented, is taken from the English statute, and prescribes the grounds of divorce exactly as they are prescribed in English law. The Chief Justice of the High Court of Bengal has, however, submitted a Minute in which he earnestly argues that the grounds of divorce should be enlarged, and that a woman should be allowed to obtain a divorce for the simple adultery of her husband, or, if that cannot be allowed, for his adultery coupled with such acts as, in the judgment of the Court, render it improbable that the wife will ever be reconciled to her husband. As the Members of Council have doubtless read the paper with all the care demanded by the eminent authority of the writer, I will not read it at length, but will give shortly the substance of the several paragraphs. Sir Barnes Peacock states his opinion to be, that he does not think it either just or politic to allow a dissolution of marriage for adultery of the wife, and not to allow it to the wife for adultery of the husband, however flagrant and however open, and however often repeated, provided it be not incestuous. He points out that this is not only his opinion, but that of many lawyers, jurists, men of the world, and legislators. He remarks on the inconsistency of placing the sexes on equal terms as regards judicial separation, but not as regards divorce. He cites a dictum, that separations without divorces *a vinculo* either condemn to celibacy or lead to illicit connection. He quotes a contention to that effect in the Marquis of Northampton's case, reported by Bishop Burnet, and a similar argument used in Lord Rous' case. He appeals to an argument of Lord Thurlow in Mrs. Addington's case that, under the Mosaic Institutions and the Gospel, a woman might be put away for adultery, and might have similar redress against her husband. He

next quotes Lord Eldon's statement that a wife had as good a right as a husband to relief in cases of this description. This statement was made in Mr. Moffatt's case, which was certainly one of extraordinary and cynical depravity in the husband. The Lords, indeed, refused the divorce by a majority of sixteen to nine, but Sir Barnes Peacock observes that it would be painful to the Judges to have to refuse a decree to the wife under similar circumstances, and that the vote of the Peers could not change the principle. The Chief Justice further observes that the House of Lords had a discretion which is not left to the Court under the Bill. He argues that, in a religious point of view, both acts of adultery are equally criminal, and both are alike breaches of the marriage-vow if looked at merely as a civil contract. "A man," he remarks, "may live with another woman in an open and notorious state of adultery revolting to his wife and revolting to society, yet his wife will not be able to obtain a dissolution on account of the adultery alone unless it be incestuous." Sir Barnes Peacock then shows that Lord Brougham, who spoke and voted against Mr. Moffatt's Bill, had apparently changed his mind in 1838. Lastly, in citing Mr. Battersby's case, Sir B. Peacock remarks that the husband had committed bigamy with his paramour and his conduct was in other respects most atrocious. "That case," he adds, "is, I presume, the origin of the words in the English Act, followed in section 10 of the present Bill, 'or of bigamy with adultery.' I do not at all understand how the bigamy strengthens the case of the wife for divorce. It was said 'how could a virtuous wife return to the embraces of such a man as Battersby.' In Battersby's case, however, it was not the bigamy which prevented such return."

It will be observed by the Council that these arguments of the Chief Justice are all of a moral nature, and if I were compelled to answer them by arguments of the same character, I freely admit I should have much difficulty in doing so. Doubtless there were members of the Committee who denied absolutely that there was any real equality between the sexes in regard to this matter. But, for myself, there is no direct answer to much that is urged by Sir Barnes Peacock, which is thoroughly satisfactory to my mind. The difficulties which I feel in regard to his proposal are difficulties arising out of considerations of expediency, of the peculiar position of European society in India, and of the relation of this Council to the English Parliament. I cannot help asking myself, in the first place, what will be the view taken by English Courts of our new system of divorce, if we introduce grounds of divorce wholly unrecognised at Home. I have already explained that I attach much importance to Dr. Lushington's declaration, that English Judges are greatly swayed by the circumstances under which foreign divorces actually take

place. Is there not some risk of our impairing the confidence of English Courts in Indian adjudications, if we write on the face of our law that our Courts are occasionally to proceed on principles not yet allowed in England ? In the next place, I am not without fear that, by giving effect to these suggestions, we might multiply facilities for connivance and collusion, and there is no doubt, to my mind, that it is the suspicion of connivance and collusion, to which is attributable the jealousy entertained by English Courts of dissolution of English marriages under foreign decrees. Take the case of connivance. It cannot be denied that the securities against it, provided by the English statute, are very considerable. In order to procure a divorce, a woman must do that which will for ever exile her from society, and a man must couple his adultery with acts which will bring him under the criminal law, or with desertion which must take him away from all his ordinary duties and employments, or with cruelty which, even if we can conceive the wife assenting to it, is something from which a man of otherwise coarse fibre will surely shrink, or which he will be loath to attribute to himself. Shall we not be materially diminishing these securities, if we allow the divorce to be obtained either for simple adultery, or for adultery coupled with such conduct as a Court may deem to be a bar to reconciliation ? These are difficulties which occur to my mind, but they are not the true reasons why I think it would be undesirable to carry out these earnestly urged proposals of Sir B. Peacock, much as we may be disposed to respect his opinion, and little as we may wish to establish any inequitable difference between the sexes.

I must call the attention of the Council to the dates of the authorities cited by the Chief Justice. The Marquis of Northampton's case occurred on January 11th, 1548; Lord Rous's in 1699; Mrs. Addison's in 1801; Mrs. Moffatt's in 1832, and Mrs. Battersby's in 1840. I presume, too, that, as Sir B. Peacock was in India in 1857, he had formed his strong opinion previously to that year. Can we blind ourselves to the fact that, since these authorities declared themselves, there has been a great legislative ruling on the subject by Parliament? It was in 1857 that the first Divorce Act became law. It was not as if the question raised by Sir B. Peacock was not fairly raised in Parliament. In the House of Lords, Lord Lyndhurst urged the same arguments at great length, and in the House of Commons the question was raised by a long series of amendments. In the discussion on one of them, the Lord Advocate opposed the Bill of his own Government, and argued for that equality of the sexes which is recognised in his own country, Scotland. It cannot be denied that the view of the Chief Justice was fairly put before Parliament, and decisively overruled. Whatever may be thought in general of the

expression "wisdom of Parliament," it seems to me more than a mere commonplace when an English social question is at stake, and I think it would be altogether out of place that this Council, which is a creation of Parliament, should set aside its authority in a matter which is practically the same in England as in India, and is governed by the same considerations in its effect upon English society and on Indian, which is a mere outwork of English society. There is something further to be urged. The measure for India, contemplated during the Parliamentary debates, was a measure corresponding with the English enactment. It was the English measure which was recommended to us by the Secretary of State, which was framed by Sir H. Harington, and which was introduced by me into the Council. Throughout, it has been recommended and probably supported on the authority of English precedent. If the question had been re-opened on first principles, how do we know that the Bill would have made any progress at all? One, at least, of the Members of Council in charge of the Bill, Sir H. Harington, held very strict ideas on the subject of divorce, and perhaps would have argued for the absolute indissolubility of marriage if he had thought it open to him to do so. I am not sure that, but for the authority of Parliament, the measure would have reached the present stage, and I am not sure that, but for that authority, it would even now become law.

His Excellency the President said he wished to state, in confirmation of what the Hon'ble Mr. Maine had said regarding the discussions in Parliament on the Divorce Act, that His Excellency distinctly recollected all that occurred when that very important question, whether it was right to place men and women on a perfect equality in regard to divorce, was argued at great length. His Excellency did not now advance any individual opinion; he had the misfortune to differ with the majority of his countrymen on the subject, and his own opinion had been against the whole course of legislation pursued in the matter of divorce. But he was bound to say that, upon this particular question—the equality of rights between the sexes—the opinion of Parliament had been most decidedly and unmistakeably expressed; that it was debated at great length in both Houses; that the view taken by Sir Barnes Peacock was advocated by men of the highest authority, amongst whom was the present Prime Minister; but the principle of inequality was recognised and carried in the House of Commons, on a division taken on the motion of Mr. Drummond, by a considerable majority. The expression of opinion then given was so decided that though, on the question being on a subsequent night put that the clause as amended stand part of the Bill, Mr. Gladstone expressed his views at greater length, but did not ask the House to divide again. The question was

afterwards raised in the House of Lords, and though many different opinions were expressed there, the Lords came to the conclusion that it was wise and desirable to agree to the amendments made by the House of Commons, and that decision was come to after the fullest discussion, and in the most solemn manner.

Therefore, after giving full consideration to the opinions expressed by different speakers in Parliament during discussions at which HIS EXCELLENCY was present, he could not now say that his opinion was that there should be so wide a departure from the provisions of the English Statute as Sir B. Peacock proposed, seeing that the classes of persons affected by the Bill now before Council were to a great extent the same as those for whom Parliament was then legislating. HIS EXCELLENCY thought the Council here would do well to follow as nearly as possible the precedent set by the Parliament at Home, which had been approved generally by the country, and had been found to work well. The real truth was that the considerations from the moral and those from the social point of view were wholly different. From the moral point of view the equality of the sexes as regards the sin of adultery was the same both in the eyes of God and man. But the social considerations were entirely different, some of which were that the proposed change would facilitate the introduction of spurious offspring into families, and that the greater facilities we gave for divorce, the greater facilities would be afforded for collusion and connivance, and that, therefore, if the principle was adopted, it might aggravate the evils that it was hoped to cure. All this led to the belief that Parliament had taken a wise course in the matter, and that we should be acting injudiciously were we to come to a conclusion differing in so important a respect from the law of England.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART said that, in section 3, clause 2, the Bill prescribed the different Courts in which suits might be brought under the proposed Act.

The clause provided—

"District Judge means, in the Regulation Provinces, a Judge of a Principal Civil Court of original jurisdiction,

in the Non-Regulation Provinces * * * a Commissioner of a Division."

In Sind, however, which was a Non-Regulation Province, there were no Commissioners of Divisions, the officers in charge of Divisions being called "Collectors." This had not been observed at the time, and it therefore became

necessary to determine now what Court in Sind should, for the purposes of the Act, exercise the powers conferred on District Judges. It had been considered that the Judicial Commissioner was the officer best suited, in accordance with the rest of the section, to be entrusted with the powers to be exercised under the Act. MR. SHAW STEWART therefore moved—

"That, in section 3, clause 2, line 6, the words 'and Sind' be inserted after 'British Burma.'"

And that, in the same clause, after line 12, the following be inserted—

"In Sind, the Judicial Commissioner in that province."

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved the following amendments—

1. "That in section 1, 'April' be substituted for 'March.'"

2. That, for section 17, clause 2, the following be substituted: "Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail."

3. That, in clause 4 of the same section, the words "an order confirming the" be substituted for the word "a" in line 4.

4. That the following words be added to the second clause of section 55: "nor from the order of the High Court confirming or refusing to confirm such decree."

5. That the following clause be prefixed to section 57: "When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired, or"

MR. MAINE said that his amendments 4 and 5 were merely intended to secure consistency of language by calling the confirmation of the High Court an order and not a decree. His fourth amendment was meant to make it perfectly clear that there was to be nothing in the nature of a second appeal in India from the decree of the District Court. The confirmation was in point of fact not less but more than an appeal, since it did not require the action of an appellant. The second amendment was intended to secure a strong Court for these confirmations. The last part of it would probably be inoperative, since there was no Court in India composed of less than three Judges except the Chief Court of the Panjáb, and the Government of India had recently recommended to the Secretary of State the appointment of a third Judge.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended by the Select Committee together with the amendments now adopted be passed.

The Motion was put and agreed to.

ARTICLES OF WAR BILL.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF moved that the Report of the Select Committee on the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces be taken into consideration. He said that it would be in the recollection of the Council that some time ago HIS EXCELLENCY was obliged to move that the consideration of the Report of the Select Committee on the Articles of War might be deferred in consequence of subsequent representations from certain quarters. The discussion on that Report was accordingly postponed. It would therefore be convenient to notice briefly the alterations which had commended themselves to the Committee and had been described in that first Report.

In the first place, the Committee had added to the list of enactments to be repealed Act XXV of 1857, section 1. That Act contemplated certain forfeitures on the part of sepoys convicted of mutiny, and had since been the law of the land. The Committee, however, thought that the first section of that Act might with propriety be re-enacted in Article 24, which ruled that, when a soldier was sentenced to death, his property should be forfeited. The Committee had also empowered the convicting Court to adjudge forfeiture of property in cases of offenders sentenced to transportation or imprisonment for a term of seven years or upwards. It was first thought advisable to repeal the whole of Act XXV of 1857, but on consideration it was found that there might be soldiers in the country who took part in the events of 1857 and 1858, and who, in such case, would escape with impunity if hereafter apprehended.

Objection had been taken outside to certain forms of oaths in the first draft of the Bill. The objection seemed reasonable. The Committee had accordingly struck out the special form of oaths for Sikhs, but they had authorised the Commanders-in-Chief, with the sanction of their respective Governments, to frame forms of oath fitted for the different persuasions obtaining amongst the classes from whom the Native soldiers were supplied.

In the case of heavy sentences awarded by Detachment General Courts Martial held beyond the limits of British India, it had been found necessary to give (Article 142, clause *f*) the power to confirm, commute, or annul to the

Commander of the Forces with which the offender might be serving, in lieu of the Commander-in-Chief in India, or of the Presidency to which the offender belonged. The object of that provision was very obvious. It might be extremely inconvenient, in the case of bad crimes against discipline being committed by soldiers abroad, if the officer in command of the Forces (as in the case of the Forces lately under Lord Napier of Magdala) had not the power to confirm the severest punishment to which the offender was sentenced, but must be compelled to refer the case for confirmation to a Commander-in-Chief in India.

In like manner it was provided that sentences on Commissioned Officers might be carried into effect when confirmed by the Commander-in-Chief of the Presidency in which the offender was serving. Thus it would happen that a Bengal Troop or Detachment, as was the case lately, might be serving in Madras or Bombay, and it was obvious that, for the purposes of discipline, such Troops or Detachments should be under the positive command of the respective Commanders-in-Chief of those Presidencies. The reason for the provision was precisely the same as that mentioned in the case of soldiers serving out of India and not immediately under the Commander-in-Chief in India. And the same reasoning applied to the 174th Article, which provided that a sentence of death passed beyond the limits of British India might be carried into effect when confirmed by the Officer Commanding Her Majesty's Forces with which the offender was serving.

In Part III, clause (*b*), it was ruled that military or enlisted debtors should not be liable to arrest for debt. Subsequently to the first Report of the Committee being circulated, letters came from Madras, in which it was presented by the Government of Madras, on the report of the Commander-in-Chief of that Presidency, that it would be expedient to extend the like immunity to all camp-followers and other people attached to an army, as well as to those actually serving in the army as soldiers. This was carefully considered by the Executive Government at the time, who came to the conclusion that it would be inexpedient so far to alter the law of the land as regards people not actually enlisted. As the Bill originally stood, the privilege of exemption from arrest for debt was applicable only to soldiers enlisted. Some objection even had been made to this, with regard to the status of the sepoy in India, but as the Bill was finally settled, the privilege extended to all enlisted persons in the same way as it extended to all private soldiers in the British Army under the Mutiny Act. But to extend it to any unenlisted person—that was to say to camp-followers and others connected with the army and living in cantonments—might interfere very seriously with the rights of property in various

ways. It was therefore considered inexpedient to acced e to the whole of the proposition of the Madras Government. On the other hand, it was to be observed that there was a considerable tendency to extend the process of enlistment to non-combatants—people attached to the Commissariat, Ordnance and Public Works Departments, who, although they exercised military functions, were non-co mbatants. Some of these were enlisted, others were not. But the tendency referred to, coupled with the change made by the Committee, would in some measure perhaps eventually give effect to the wishes of the Madras Government.

HIS EXCELLENCY believed the above remarks exhausted the changes which were proposed in the first Report.

In the second Report of the Select Committee there were but few changes to mention.

In a number of the Articles (3, 4, 73, 77, 79, 142, 152, 156, 160, 161, 164, and in Part III, clause *h*), it had been determined to omit special mention of the Commander-in-Chief in India, and to refer to him as the Commander-in-Chief of a Presidency. HIS EXCELLENCY might mention that the cause of this change was two-fold. In the first place, it was observed by the Judge Advocate General of the Bengal Army that, according to the Bill as introduced, all mention of the Commander-in-Chief of Bengal was omitted, whereas it might happen, as had occurred on former occasions, that the Commander-in-Chief in India might be the Commander-in-Chief of the Presidencies of Madras or Bombay, there being a provisional Commander-in-Chief in Bengal occasioned by the death or sudden departure of the Commander-in-Chief in India. The other objection was one which came from Bombay, *viz*., that by the phrase used in the original draft, some new power had been attributed to the Commander-in-Chief in India. This objection appeared at first more formidable than it really was. It was apprehended, as just stated, that the Bill as drawn attributed for the first time extraordinary powers to the Commander-in-Chief in India, and did in point of fact give him the faculty of introducing himself into the minor presidencies for the purpose of immediate command.

When this objection came up, the whole question was referred for the opinion of the Advocate General of Bengal, and after careful consideration of the Acts of Parliament and Warrants under which the authority of the Commander-in-Chief in India was founded, it was established by Mr. Cowie that no power was conferred by the draft Bill which the Commander-in-Chief in India did not already possess, but, on the contrary, that those powers were

conferred by the Acts of Parliament and Warrants issued under those Acts. But it appeared to the Select Committee, both with reference to the opinion of the Judge Advocate General of the Bengal Army which HIS EXCELLENCY had already referred to, and also to prevent the possibility of a mistake in the sense in which the Bombay Government had discussed the matter, that it would be wise to revert to the form of the existing Articles, and erase the title of the Commander-in-Chief in India from the Articles mentioned in the Report of the Committee. But it was necessary, as pointed out by Mr. Cowie, that we should not legislate away the powers of the Commander-in-Chief in India with which he had been specially invested by Acts of Parliament, and which were kept alive by the Warrants conferred on him from year to year. Accordingly, in Part III, clause (*i*), it was stated that nothing in the Act should be deemed to affect the authority conferred on the Commander-in-Chief in India by any Act of Parliament or by Royal Warrant or Commission.

HIS EXCELLENCY thought it right to say, for the information of the Council and also for that of the Governments and Commanders-in-Chief of Madras and Bombay, that there was never any intention to add to the authority or attributes of the Commander-in-Chief in India by those who were responsible for the framing of this Bill. The truth was that, in the matters affected by this Bill, the power to which HIS EXCELLENCY had adverted, although kept alive by Warrants issued by the Crown, was dormant. It was never exercised and would never be exercised unless the constitution of the army should be altered executively, or unless it should be necessary to meet difficulties arising out of circumstances such as those of 1857 and 1858. HIS EXCELLENCY thought it should go forth to the public that there had never been the slightest desire or wish in any manner to add to the attributes of the Commander-in-Chief in India.

In Article 93, there was a slight change: for "offences by which such Commanding Officer is personally aggrieved," the Committee had substituted "offences against such Commanding Officer," on which it was perhaps necessary to remark. This Article was one which had caused a good deal of discussion out of doors. When the Bill was introduced some months ago, HIS EXCELLENCY took occasion to remark that no change of substance, as affecting the powers of Commanding Officers when properly exercised, was intended by this Article; but it had been deemed necessary, in the interests of justice, that certain restrictions should be placed on the very extraordinary powers given to Commanding Officers by the Act of 1858. At the same time, so carefully had this Article been amended, that it was impossible to say that any officer who viewed his duty as he should do could possibly say that his authority had been restricted in any

direction in which he could wish to exercise it. In support of that statement HIS EXCELLENCY would call attention to the words used in the Article:—

"Any offence against these Articles, except mutiny, may be tried and punished by Summary Court Martial:

Provided that, when there is no emergent reason for immediate action, and reference can, without detriment to discipline, be made to superior military authority, a Commanding Officer shall not try by Summary Court Martial, without such reference, any of the following offences:—

Offences under Articles 7 to 23, both inclusive, ordinarily punishable by General Court Martial only:

Disgraceful offences under Articles 54, 55, 56, 60, 61 and 64; and

Offences against such Commanding Officer."

It was clear that, if the offence was punishable by a General Court Martial, it should not be referred to an inferior tribunal, because the offender would escape with a punishment inadequate to the crime of which he might be guilty. The offences mentioned in Articles 54, 56, &c., were either offences against property, or such as required a nice appreciation of evidence, and which, in the great number of cases, were made over to the Civil Courts for trial. The offences under the third head were offences against the Commanding Officer himself, which the officer ought obviously, if practicable, to be prohibited from trying himself. HIS EXCELLENCY's attention had, in the execution of his office, been directed to the point that these offences had been so tried by the officers against whom the offences had been committed, and HIS EXCELLENCY was afraid that sentences had been adjudicated in some cases, while the Commanding Officers were themselves labouring under the influence of passion. HIS EXCELLENCY thought, therefore, that no reasonable man could possibly object to these restrictions. The change of expression adopted by the Select Committee had made the Article rather more general than in the Bill as introduced: the reason was that it would be rather difficult at times to decide whether an offence fell within the original phrase of the prohibition, and would perhaps necessitate the taking of evidence on the point; but there could now be no mistake as to the application of the Article.

HIS EXCELLENCY believed he had now adverted to all the changes suggested by the Select Committee.

The Motion was put and agreed to.

HIS EXCELLENCY then moved that the Bill as amended be passed. In making the motion, he would beg to tender his thanks to his gallant friend (Colonel Norman) who had introduced the Bill, and whose place HIS EXCELLENCY had now unworthily taken, owing to Colonel Norman being no longer a Member of the Council.

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. SHAW STEWART presented the Report of the Select Committee on the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter.

FOREST RULES (BRITISH BURMA) BILL.

The Hon'ble MR. MAINE, in moving for leave to introduce a Bill to give validity to certain Rules for the administration of Government Forests in British Burma, said that this Bill was intended to correct a slight error which had been committed in the Forest Department. Under Act XXX of 1854, the Governor General in Council had power to make rules respecting the floating of timber in the Pegu, Malabar and Tenasserim Provinces, and timber floating contrary to such rules was to be confiscated. He had also power to impose import duties on timber entering the provinces by the rivers. In 1865, strong representations made by the Forest Officers as to the devastation of Indian forests led to the enactment of Act VII of 1865, under which rules were to be made on a great variety of subjects connected with Government forests. Rules were made under this last Act by the Forest Department, which would have been perfectly valid throughout, if unluckily the framer of the rules had not incorporated with them the older rules made under the Act of 1854. This was doubtless done for the sake of convenience; but the effect was to throw doubt on the legality of part of the rules, since Act VII of 1865 only applied to timber the produce of Government forests, and did not apply to timber which had entered British India from foreign territory. Moreover, it was not a Customs' Act. MR. MAINE proposed to ask His Excellency to suspend the Rules in order that the Bill might be referred to a Select Committee, on which he proposed to place his hon'ble friends Mr. Cowie and Mr. Bullen, and he hoped to convince them that there was no intention of placing any fresh burden on commerce, but merely to correct a not unnatural departmental error, and to protect officials who had been acting in good faith.

The Motion was put and agreed to.

The Hon'ble MR. MAINE having applied to His Excellency the President to suspend the Rules for the Conduct of Business.

The PRESIDENT declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be referred to a Select Committee with instructions to report in a week. He observed that it was only intended to be provisional. Information had reached the Government which seemed to show that the timber trade of Maulmain was in a very unsatisfactory state. Grave malpractices were alleged to have occurred on the other side of the frontier, and there was an amount of litigation respecting the ownership of timber at Maulmain, which would be disastrous to any trade. It was the absolute duty of Government to take up the subject with as little delay as possible.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to give validity to certain Rules for the administration of Government Forests in British Burma—the Hon'ble Messrs. Cockerell, Cowie, Bullen and the Mover.

The Council adjourned till the 5th March 1869.

WHITLEY STOKES,
Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 26th February 1869.

Government of India Central Printing Office.—No. 173 L. D.—29-11-83.—70

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 5th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpúr.
The Hon'ble G. S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

EMIGRATION OF COOLIES' BILL.

The Hon'ble MR. GORDON FORBES moved that the Report of the Select Committee on the Bill to amend the law relating to the Emigration of Native labourers be taken into consideration. He said that the Bill was introduced by the Hon'ble Mr. Strachey in August last. It was a simple Bill, intended to amend Act XIII of 1864, which was the law that at present regulated the emigration of Native labourers to the British Colonies. The Bill, as introduced, contained a very few but not unimportant amendments, which, as some months had elapsed since the introduction of the Bill, he would take leave to recapitulate. The Bill first provided that vessels leaving Madras for the Mauritius and Seychelles should be provisioned between the months of November and March for six weeks, instead of five weeks, which was laid down as the probable length of voyage under the existing law. It also secured the provision of

a different space on deck for each adult emigrant than what was now provided by law. Ten superficial feet, which was the space now allotted for each adult, was proposed to be extended to twelve. A clause had also been inserted in the Bill as introduced, which gave the Government power, in the event of its being ascertained that, in any place in which emigration operations were being carried on, the plague or other infectious disease dangerous to life was prevalent, to direct that emigration should for the time being be suspended. These proposed amendments were introduced entirely in the interests of the emigrants, and were to apply only to emigration to the British Colonies. There was also a fourth clause, which empowered the Government of India to increase the rates of fees payable on emigration, if need be to double the amount of fees now leviable. It had transpired in the course of the five years during which the present law had been in force, that the cost of the establishment retained for purposes of emigration had not been covered by the fees levied under the Act. That was the scope of the Bill as introduced, which, as Mr. Forbes had said before, applied simply to emigrants to the British Colonies.

He had before him a list of thirteen Colonies, British and Foreign, the whole of which drew their labour from about the same number of provinces in India. From that statement it would appear that, up to the present time, 4,55,600 persons had emigrated from Madras and Calcutta. That did not include emigration from Bombay, which had never been considerable; nor did the numbers include emigration from Pondicherry, where the records had been very imperfectly kept prior to 1860.

Some embarrassment had been felt by the Committee in rendering the Bill as introduced, and the clauses added to it by the Committee, applicable to the French Colonies, because the convention of Paris, dated June 1860, was drawn up previously to the introduction in Indian legislation of those very complete provisions under which emigrants at present left the country. It differed, therefore, in some respects from this subsequent enactment, though there was an intention that the conditions of the convention should, as far as possible, be applied to British as well as French Colonies. As, however, Act XLVI of 1860, which embodied and recited the French convention, enacted a variety of rules to give effect to the provisions of that convention, the Select Committee had applied the amending Bill to that Act in such particulars as they could reach without a practical violation of the convention. The application of these clauses to French emigration was in some cases entirely beyond the terms of the convention: that remark applied, for instance, to the fourth section of the Bill as amended by the Select Committee, which provided that there should be an additional superficial space for every adult emigrant,

and that no child should have less than eight superficial feet. It was impossible to apply that rule to French emigration, but it might perhaps be deemed advisable by the Government of India to communicate with the French authorities on this point. It seemed unreasonable that British subjects should have less accommodation, and that their health and comfort should be less adequately provided for when sent to French Colonies, than when sent to our own. In section 1 of the Bill, as amended, it was provided that vessels should be provisioned for six weeks, instead of five as at present, when making the voyage in winter between Madras and Réunion, Mauritius or Seychelles, but it was impossible to include vessels leaving Pondicherry, which was a port of embarkation, and regarding which nothing had been said in Act XLVI of 1860, which simply recited the French convention and provided means for its fulfilment. That was another point which might be worthy of reference by the Government of India.

In the application of the third clause of the Bill as introduced, and which stood as section 5 in the amended Bill, the Select Committee had made an alteration which would have the effect of applying this particular provision to the French as well as British Colonies. It could scarcely be said that any practical violation of the conditions of the French convention would be caused, or that we should in any way be infringing the convention, by the Select Committee having taken for granted the assent of the French Government to the extension of the convention to this reasonable precaution.

In section 2 of the Bill as amended, there was a clause which was introduced by the Select Committee. It was pointed out by the agent for emigration to British Guiana and Trinidad, that the law as it stood entailed certain hardships. The agent represented that the fee paid for registering an emigrant should be refunded in case of the emigrant absconding before reaching the central depôt in the port of embarkation. The Committee had extended the section which they had introduced on that representation, and had provided that, if the emigrant absconded at any time before embarkation, the agent should be entitled to receive back the fee: that appeared a simple act of justice.

There were other clauses added to the Bill on the suggestion of the Lieutenant Governor of Bengal, and which had been approved by the Government of India. These were that, in case of emergency (section 3), emigrant vessels might leave Calcutta for any place west of the Cape of Good Hope "between the 31st of July and the 1st of April." Those words extended the discretionary time fifteen days at its close: the privilege was only intended to be made use of to prevent unnecessary detention of emigrants, occasioning great loss to

the importers of labour and additional risk to the emigrants. The reason for limiting the time originally was the very inclement weather experienced at a later period in rounding the Cape, from which Native emigrants were likely to suffer. Consequently the period of embarkation was at first limited to the 1st of March; it was subsequently extended to the 15th of March, and now fifteen days more had been added, and vessels might, in cases of emergency, leave up to the 1st of April. It was not expected that the extended time would be frequently made use of, and it was therefore introduced for the purpose of taking effect in emergent cases only.

The Select Committee had also thought it right to provide specially for children. In the correspondence before MR. FORBES, there were letters which passed between the Emigration Commissioners and the Secretary of State for India on the subject of Indian emigration generally, and in particular with reference to the great mortality which occurred in 1864; and Mr. Murdoch, one of the Commissioners, observed that it was impossible to accommodate two half grown children in the space for one adult, which might be represented by a strip of deck two feet wide and six feet long. The Select Committee had therefore provided that children above two and less than ten years of age should have at least eight superficial feet on deck.

Another of the new provisions in the amended Bill had also received the approval of the Government of India on the recommendation of the Lieutenant Governor of Bengal. A rule had been enacted which provided that every hundred male emigrants should be accompanied by at least forty women, so that no vessel could leave port without that proportion of male and female emigrants on board. But in practice it had been found, both on the testimony of the Medical Officers and the Emigration Agents, that the strict observance of that rule had resulted in common prostitutes being recruited in default of other women being available, and that emigrants were delayed in the depôts at the risk of sickness resulting and great expense to the importers of labour; and therefore it seemed absolutely wise and humane to enact that, in cases where the required proportion of women could not be made up, the vessels should not be detained. The words "in cases of emergency" had been introduced to indicate that the rule was not to be departed from under ordinary circumstances.

Section 7 of the amended Bill provided that the phrase "The Magistrate of the District" should for the purposes of the Act mean any officer who exercised the full powers of a Magistrate. This alteration had been desired and was made in the interests of all parties, both of the agents and the emigrants. There being but one Magistrate of the District, it often happened

that long distances had to be traversed for purposes of registration, so that hardship was entailed on the emigrants as well as the agents, who had to provide for the maintenance and lodging of the emigrants during the time. The Government of India had also authorized this change.

Lastly, sections 55 to 58 of Act XIII of 1864 were proposed to be repealed. They provided that the pilot or the customs' officer, whoever might be last on board, should before leaving the vessel assemble the emigrants and ascertain if any additions had been made to their number subsequently to the vessel leaving port; this muster was required to prevent any emigrant joining a vessel on its way down the river. But it was now found unnecessary to retain this rule, because emigrant vessels were by another rule bound to take steam on their passage to the sea, so that it was perfectly impossible for such a breach of rule taking place now. MR. FORBES understood that pilots and customs' officers had made formal complaints in regard to this matter. The Government of Bengal had recommended and the Government of India had approved of dispensing with this final examination. Considering that, as the Protector of Emigrants was bound to pass every emigrant before embarkation, and to see that all the provisions of the law were complied with, it was unnecessary to take any further precaution in this direction.

The Committee had approved of another clause which was not in the Bill: it was intended to empower the Government to withhold a recruiter's license in any province from which the further withdrawal of labour might be considered inexpedient. The grounds for this provision were briefly these. MR. FORBES had mentioned that labour was drawn principally from thirteen or fourteen provinces in Madras, Bengal and the North-Western Provinces, and he had also given the number of emigrants withdrawn, which was 455,600; during the last twenty-five years 92,000 emigrants had returned; the remaining 363,600 continued abroad, and were probably settled in the colonies to which they had emigrated. They were extremely well treated; their labour was highly valued, and every inducement was offered for them to remain. Out of this last number it might fairly be estimated that 250,000 emigrants were adult men, which was equivalent to the entire adult male population of an ordinary Indian province, containing a miscellaneous population of about a million and a quarter, and paying a land revenue to Government of ten or twelve lákhs of rupees. MR. FORBES got that calculation by a reference to the census tables, from which it would appear that about three-fourths of the people in a province were agricultural; so that, in such a province as he had instanced, three-fourths of the population, or 800,000, would belong to the agricultural classes; and taking only one in

every four persons to be an adult male, 200,000 men would represent the real productive power of the province. He ventured to put these figures before the Council because, although the question of limiting the operation of the recruiting agents to provinces where there was any surplus labour was not entertained by the Committee, on the ground that considerations of too much difficulty were involved in the disposal of the question, he thought the figures he had quoted showed that emigration in India had assumed dimensions which might at any time render it absolutely necessary for the Government to consider the question, as the number of provinces from which emigration took place was limited in number, and the number of colonies to which the emigrants proceeded were about the same number. He wished to add, in order to enable the Council to estimate the value of the lost labour more truly, that the export trade of the colonies which had the advantage of Indian labour had increased so enormously that the produce of the labour sent out might be estimated at thousands and thousands of tons, and India's loss was represented by the benefits gained by the colonies; for, if left in the country, those labourers would certainly be capable of producing the same amount of valuable produce. It could not be disputed that India was thinly populated, and that what caused a diminution of the supply of labour diminished the supply of food, diminished the cultivation of the staples which formed the exports of India, retarded the general progress of agriculture, and increased the difficulties of capitalists engaged in the cultivation of special products such as coffee, cinchona, tea, indigo, &c.

The Hon'ble Mr. Strachey said, except for one reason he should have thought it unnecessary to make any remarks on the present occasion, for he entirely agreed with all the details of the Bill before the Council, and he believed there was not likely to be any opposition to the passing of the measure. When the Bill first came forward, he had charge of it. He had explained that its intention was to make certain small amendments in the existing law, and although legislation was thought necessary, he might say that a more simple Bill, and one less likely to raise a discussion on matters of principle, hardly ever came before the Council. The Bill still retained its former character; but he thought it clear from the speech of the Hon'ble Mr. Forbes that he regretted that fact. He had taken the opportunity of entering into questions, which involved the whole subject of emigration from British India, and of discussing the merits and demerits of the principles by which the Government and the legislature had hitherto been guided in dealing with this most important subject. Although Mr. Strachey deemed this to be hardly a fitting opportunity for discussing such questions, he thought it would not be right to let

his Hon'ble friend's remarks go without some reply, for his Hon'ble friend's view amounted to this, that emigration was causing such serious injury to the country that it was the duty of the Government to stop it altogether. If such views were left altogether unnoticed, there might be some impression outside that they were approved by the Government. Now he would ask, in fact, what evidence there was to show that any of those injurious results which had been depicted by his Hon'ble friend had occurred. MR. STRACHEY ventured to say that there were no facts whatever to show that there had been any injurious results of any kind. His Hon'ble friend had said that, during the twenty-five years during which emigration had gone on, 4,55,000 persons had left India, and he had told us, that not long ago there were 2,00,000 emigrants still living in the Mauritius alone. According to those figures, some 16,000 or 17,000 persons, on the average, had left India every year. MR. STRACHEY must say that from those figures his Hon'ble friend had built up a somewhat extraordinary structure. We were asked to imagine a great province with a population of a million and a quarter, paying a revenue of ten or twelve lákhs a year, and his Hon'ble friend appeared to consider that the emigration of these 16,000 or 17,000 persons a year was equivalent to a loss to the country more than equal to the loss of such a province. It seemed to MR. STRACHEY that we need not be under any alarm on this subject. It seemed to him plain that this loss to which his Hon'ble friend had referred was as imaginary as the existence of the province of which he had spoken. The population of British India was ordinarily taken at some 180 millions, and from this number a population of 16,000 or 17,000 a year had to be furnished. But let it be admitted (though MR. STRACHEY was not prepared to admit it) that the assumption was correct that the emigrants were really provided from a population no larger than that which the Hon'ble Member had assumed, and that they were all drawn from those twelve or thirteen provinces of which he had spoken. MR. STRACHEY found, in a memorandum prepared by his Hon'ble friend, that he said that emigration was almost entirely limited to some half dozen provinces in Bengal and about the same number in Madras, and that the average population of each of those provinces was a million and a half. MR. STRACHEY therefore presumed that his Hon'ble friend considered that a population of about 18 millions had provided these emigrants. If 17,000 people had left India every year, it was by his Hon'ble friend's calculation equivalent to saying that one in a thousand had gone away from these provinces annually. It seemed to MR. STRACHEY clear, that such a reduction of the population as this must be really altogether inappreciable, and this would be true even after making any allowance that we pleased in consideration of the fact stated by Mr. Forbes, that in agricultural districts the labouring

classes of the community from amongst whom emigrants were principally drawn, made up only about three-fourths of the population. There were a hundred other physical causes at work, which must have an incomparably greater effect on the numbers of the population than this very insignificant cause of emigration. His Hon'ble friend appeared to assume that if the emigrants who had left India during the last quarter of a century had remained in the country, India would be richer by the food-producing power of some quarter of a million of prosperous agriculturalists. MR. STRACHEY failed to see any basis of fact for this assumption. It appeared to him that the truth was that, if this emigration had never taken place at all, the population of India would not, as a matter of fact, have been increased by anything like that number. But supposing we admitted that it would have been increased to this extent, the real question was simply this. Would this quarter or half a million of men have been better off if they had remained in India than if they had emigrated, and if they had remained, would they practically have added to the general stock of wealth, to any considerable extent, of the community from which they were taken? It had been said that not long ago there were 2,50,000 emigrants in the Mauritius, and it was admitted that they were living in comparative wealth and comfort. The real question to be considered was, whether it was better that those 2,50,000 emigrants should be living in comparative wealth and comfort in the Mauritius, where their labour had conferred on that country and on the nation benefits of a most important character, or that they should be living in comparative poverty in India? We need not trouble ourselves to look beyond the advantages to the emigrants themselves. To whatever extent emigration was beneficial to individuals, we might safely assume that it would be beneficial to the country at large.

In the debates which took place in this Council in 1864, when the subject of emigration was under discussion, he observed some remarks, which he would read, made by Sir Charles Trevelyan:—

"The emigrant went where he earned higher wages, and could acquire that which was to him a little fortune. He saw life in new aspects, and drank in new ideas, so that he returned a changed man. The emigrants who returned from the Mauritius, to which emigration had been going on for many years, came back an improved people; well clothed, and well fed; with an aspect of contented independence, and with property which they ordinarily invested in agriculture, and it was partly to these investments that the great extension of agricultural industry in the Madras Presidency was attributable. An annual efflux of the Madras labouring population had also been going on for many years to the Coffee estates in Ceylon. They crossed the Straits of Manaar for the Coffee season, as the Irish labourers crossed St. George's Channel for the hay-making and harvest in England and Scotland, and returned home at the

end of the season with the savings of the year. He (Sir Charles Trevelyan) might mention another instance of the advantage arising from emigration. In his official tour in Tanjore he held free conferences with all classes, and especially with the landholders, the Mirásidárs, who were a very important class in that part of the country. After other topics had been discussed, they asked that the people, whom they had formerly held in a kind of serfdom, should be prohibited from emigrating. He (Sir Charles Trevelyan) told them, that every subject of Queen Victoria was free to go wherever he chose, and that the remedy was in their own hands, as they had only to give higher wages to induce their people to remain at home. If emigration had been stopped, this servile class would have remained in their old condition, but emigration had emancipated them from those who had exercised a qualified ownership over them. It had given them a new sense of freedom, and had elevated their condition, and there could be no doubt that, in various ways, the freedom which the people now possessed to go where they liked, was a great benefit to them."

It seemed to Mr. Strachey altogether out of question at the present time even to think of putting restrictions on the right of any one to take his labour to whatever market he thought profitable to his personal interests. It was true even of the ignorant labouring classes of India that they understood their own interests in this matter infinitely better than they could ever be understood by any Government. As the Hon'ble Mr. Maine observed in the debate already referred to:—

"All emigration laws, such as the Bill before the Council, were preceded and underlain by the principle laid down by the Hon'ble Mr. Harington, the right of every subject of Her Majesty to go anywhere he pleased—to the very ends of the earth if he thought fit—for the sake of bettering his condition; that principle, he took the liberty of saying, ought to be denied least of all men by an Englishman in India."

These seemed to Mr. Strachey to be clearly the only true principles on which we could legislate, and these were the principles on which the legislation of the Government of India had constantly proceeded. We had considered that it was not our business to interfere with the right of any man to dispose of his own labour as he thought fit; but nevertheless that it was obviously the duty of the Government to take every care that its subjects should not be made the victims of fraud or misrepresentation, and that every man who wished to emigrate should do so by his own free will alone.

He ventured to say that it would be impossible for any Government to take greater precautions than had been taken by the Government of India to afford every proper protection to emigrants, to provide efficient safeguards against misrepresentation and fraud, and to take care that no one left India without the fullest knowledge of the real nature of the step he was about to take. He would ask the Council to remember the provisions of Act XIII of 1864,

which was the most important of the laws relating to emigration. It contained, he might say, rules on almost every conceivable subject for the protection of emigrants. First, the Government of each colony to which emigration took place had to appoint an Emigration Agent, who was responsible strictly to the Government of India. Then, at each of the ports from which emigration took place, the Government of India appointed a carefully selected officer under the title of Protector of Emigrants. It was his business to protect generally and aid with his advice all emigrants who came before him, and to see that all the provisions of the law were carried out. And at every port of embarkation, medical officers of experience were appointed for the medical inspection of all emigrants. Depôts were provided for their reception, and most strict rules were laid down for their management; and the Protector and Medical Inspector were bound, at least once every week, to inspect these depôts and to examine into their state and into the manner in which the emigrants were lodged, fed and provided for. So with regard to recruiting great precautions were taken. No one could recruit without a license from the Protector, and every care was taken to guard against the danger of any person being induced under false pretences to leave the country. Before he left his own district he was to go before the Magistrate, who would examine him as to his real wishes; and if the Magistrate were in doubt, and thought that the intending emigrant had not comprehended the nature of the engagement, or had been induced to enter into it by fraud or misrepresentation, the Magistrate was bound to refuse to register the emigrant, or to allow him to emigrate. Then, again, great precautions were taken to secure the provision of proper food and lodging during the journey from his home to the port of embarkation; and when the emigrant reached the port, Mr. Strachey might say that a constant system of examination into his physical state and welfare was kept up until he finally left India. It was only after all these repeated enquiries had been made, and the officers of Government had satisfied themselves, by personal enquiries in every case, that the emigrant really desired to leave India, that he was allowed to go. Minute regulations were also laid down regarding the treatment of the emigrants during their voyage on boardship, and every security possible was taken that they should be well treated in the colonies to which they went. Special agreements were entered into with the Colonial Governments, or conventions with Foreign powers, to ensure the proper treatment of the emigrants.

Mr. Strachey thought it might fairly be said that, if the Government of India had erred in this matter, it had probably erred on the side of attempting

too much. When Act XIII of 1864 was passed, the strongest remonstrances were made against it by persons interested in emigration, and by the Government of the Mauritius, on the ground that so many difficulties were thrown in the way that emigration would become almost impossible. He believed that those apprehensions were not well founded; that so long as the Government of India insisted on the precautions prescribed by the law, it would be impossible to say that any improper encouragement to emigration had been afforded. If, notwithstanding these elaborate rules, emigration had really been encouraged, he thought the Council would agree with Sir Henry Harington who said that we had only succeeded in making emigration popular by means of the substantial protection which we had afforded to the classes for whose benefit we had been legislating.

The Hon'ble Mr. Cowie said, the Hon'ble Mr. Strachey had ably defended the policy of the Government in permitting and regulating the emigration of Indian labourers to the colonies. As a non-official Member, Mr. Cowie might be allowed to record his entire dissent from the remarks made by the Hon'ble Mr. Forbes against the further permission of emigration. Mr. Cowie was of opinion that every Native should be free to go wherever he chose, subject of course to the enforcement of proper sanitary regulations. He should be sorry to see the Hon'ble Member's views maintained so as to prevent a labourer from emigrating to any place where he might think it to his interest to proceed.

The Motion was put and agreed to.

The Hon'ble Mr. Gordon Forbes moved that the following section be introduced after section 1:—

2. For section 24 of the said Act No. XIII of 1864 the following shall be substituted :—

"24. The protector of emigrants at each of the three ports aforesaid and the British Consular Agent at each of the French ports in India, shall license so many fit persons as shall to him seem necessary to be recruiters of labourers, and no person shall act or be employed as a recruiter of labourers except under a license from such protector of emigrants or British Consular Agent."

He said that the proposed change had been required by the Secretary of State in a despatch dated some time back. It was intended to legalize the appointment and licensing of recruiters by the British Consular Agents at French Ports of embarkation; this omission in the Act of 1864 seemed to be unintentional. The Secretary of State's despatch had the following paragraph :—

"There may perhaps have been no practical objection to permitting the Consular Agents at the French Ports in India to license persons to act as recruiters of emigrants in British

territory; but as this power was declared by the Advocates General of Madras and Calcutta to be legally vested solely in the Protectors of Emigrants at the three presidencies, it would have been more prudent not to have authorized a deviation from the law. It is desirable, however, that no time should be lost in legalizing the practice you have permitted the Madras Government to recognize."

That was the reason for the introduction of this amendment, which necessitated the re-numbering of the sections, and the addition of the following section:—

"11. All persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if this Act had been in force; and no suit or other proceeding shall be maintained against any such person in respect of anything so done.

This section shall come into operation at once: section two shall be deemed to have come into operation on the eighteenth day of March 1864; and the rest of this Act shall come into operation on the first day of May 1869."

This final clause was simply necessary to indemnify persons for acts done under authority of the Government, but without legal sanction up to the present time. This clause would take effect at once; section 2 would date from the 18th of March 1864, and the rest of the Act would not take effect till the first of May, because the owners of French ships should have timely information of the changes made in the law.

The motions were severally put and agreed to.

The Hon'ble MR. GORDON FORBES also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL COURTS' (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART asked leave to postpone the presentation of the Report of the Select Committee on the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.

Leave was granted.

GENERAL STAMP BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill for imposing Stamp Duties on certain instruments. He said there were some rather important alterations in the Bill, especially in regard

to the rates of duty chargeable on transactions of the larger amounts. He therefore proposed to republish the Bill before proceeding with the consideration of the report.

FOREST RULES (BRITISH BURMA) BILL.

The Hon'ble Mr. Maine presented the Report of the Select Committee on the Bill to give validity to certain rules for the administration of Government Forests in British Burma.

The Council adjourned till the 6th March 1869.

WHITLEY STOKES,

Secy. to the Council of the Govr. General
for making Laws and Regulations.

Calcutta,
The 5th March 1869.

Govt. of India Central Printing Office.—No. 174 L. D.—20-H-63.—70.

MA ... ICE

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Saturday, the 6th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I. of Balrâmpúr.
The Hon'ble G. S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

INCOME TAX BILL.

The Hon'ble SIR RICHARD TEMPLE in moving for leave to introduce a Bill for imposing duties on Income and profits arising from Offices, Property, Professions and Trades, said

"I have now to submit to Your Excellency and to the Legislative Council the financial Budget of British India for the official year 1869-70. This will be the tenth annual statement presented since the creation, in 1859, of the office which I have the honor to hold.

Following the practice of my predecessors, I shall divide my exposition into three parts, namely, the "actuals" of 1867-68; the "regular estimate" of 1868-69; the "budget estimate" for 1869-70. Slightly veiled under these tech-

nical designations, my meaning is just this—I shall exhibit the finances, firstly, as they have really turned out for the year that is past; secondly, as they are almost certainly turning out for the year that is present; thirdly, as they are expected to turn out for the year that is to come.

The first part of my subject, then, relates to the finances of the past year 1867-68. My Right Hon'ble predecessor Mr. Massey showed in his last statement that the receipts had risen from $46\frac{3}{4}$ millions sterling in the budget estimate to $48\frac{1}{4}$ millions in the regular estimate. In the statement of actuals which I have now to produce, these $48\frac{1}{4}$ millions have risen further to a little less than $48\frac{1}{2}$ millions. In other words, the income of that year has turned out actually $1\frac{2}{3}$ million more than what was originally estimated. This is so far very satisfactory.

On the other hand, the general and ordinary expenditure of that year has actually turned out to be nearly $49\frac{1}{2}$ millions, being 2 millions more than the budget estimate of $47\frac{1}{3}$ millions. Of this increase half a million arose in India, and the remainder occurred in England.

Thus it is that although the receipts of that year rose much more than was anticipated, the expenditure rose even more. And the result shows $49\frac{1}{2}$ millions of expenditure to only $48\frac{1}{2}$ millions of receipts, or an actual deficit of more than a million.

But the statement of general and ordinary expenditure, as I have just given it, will be found to differ from that presented by my predecessor. It will be remembered by this Council that last year he explained the distinction which had been introduced between ordinary and extraordinary expenditure. In the extraordinary expenditure he proposed to include not only the great irrigation works and the special works at Bombay, but also a part of the expense of military barracks, of roads, and other public works. After further consideration it has been decided, with the express approval of the Secretary of State, that only such works as those for irrigation or for the special land funds at Bombay shall be counted as extraordinary; and that all other public works, including military barracks, communications, and the like, shall be treated as ordinary. The principle of the distinction is clear. All public works, however beneficial indirectly, are to be provided for from the ordinary income of the year: and those works only are to be treated as extraordinary and provided for by loan which will yield a direct cash return to the treasury. In order to meet this view, the original budget estimate and the statement of actuals have been slightly rearranged. And the consequence is the exhibition of a deficit as already set forth.

Besides the ordinary expenditure thus revised, there was also an expenditure of more than half a million on extraordinary works according to the improved definition. This added to the 49½ millions already shown brings up the total to more than 50 millions.

Thus the financial out-turn of the last year, 1867-68, has been a deficit of a million, including all ordinary expenditure, or a deficit of more than a million and a half, including extraordinary expenditure.

This result, running counter to some arguments heretofore used, does no doubt read us a lesson; especially as it follows on the heavy deficit of 2½ millions left by the preceding year, 1866-67.

So much, then, for the finance of the last year, 1867-68, as now proved by the event. And before quitting the region of actual event, I would observe that in respect to the revenues and resources of India, experience shows that the estimates, in the aggregate however favorable, are almost always outstripped by the reality. Just as wave passes wave in a rising tide, so one budget after another springs up in an ascending scale. Then although each budget estimate has surpassed its predecessor, it in its turn has been usually surpassed by the regular estimate as the year advances, which, again, has been generally surpassed by the statement of actuals after the year has closed. Such experience does indeed inspire hope.

But then unfortunately the same process happens with the expenditure, and the consequence has been that of the eight years that elapsed from the commencement of our budget system in 1860 up to the end of last year, three only were years of surplus, while five were years of deficit. In one year, however (1861-62), the deficit was but small, so it may be said that half the period, or four years, have been remarkable for surplus or equilibrium; while deficit has been characteristic of the remaining half.

All these deficits occurred notwithstanding that within this brief period, that is, since 1859-60, our income grew from 39 millions to 48½, showing increase of 10 millions, or more than 20 per cent.—which increase has accrued not by territorial accession involving counter expenses, but by regular development—and notwithstanding that there has been no considerable war, and that general peace has prevailed. Nor can these deficits be attributed to expansion of military and defensive establishments, for, on the contrary, the military and marine charges (incurred either in England for India, or in India itself) have fallen by full 50 per cent. The real growth of expenditure, then, has been on account of general administration or of public improvement.

This fact is, on the one hand, satisfactory, as showing that the expenditure has been directly for the advancement of the people of India, the money having been spent on the country itself. On the other hand, it affords a warning that such increase being not absolutely unavoidable (however beneficial) must either be sternly kept down, or else, if it be maintained in the just interest of the country, then that some augmentation of our resources must be secured.

Again, although the retrospect of increase upon any given period, like a decade of years, is gratifying, yet the gratification would be abated if the increase were to be strictly analysed. For, on the whole, the land revenue within the period has not materially increased; doubtless the settlements, permanent or for long periods, prevent such increase, but then re-settlements in several parts of India have been made on expiry of old settlements, and yet for the country at large the net result has been to keep the total much as it was. The customs have not increased; there is nothing wonderful in that, inasmuch as the duties have been so largely reduced. No doubt the salt revenue has much risen; but then the duties have been greatly raised in some provinces. So also the opium revenue has risen; but the causes of that progress are extraneous to India. On the whole, nearly half of the 10 millions of increase has sprung from the two items of salt and opium. The rest has arisen from several sources, among which must be included assessed taxes. Thus our progress, though, on the whole, considerable, is yet not such as would indicate any *rapid* development of those national resources on which the State can rely. This progress, therefore, is not at all such as should inflate us with undue confidence or lull to sleep our financial vigilance to maintain the equipoise of income and expenditure.

Sir Charles Trevelyan, speaking in 1863, expressed a fervent hope—not yet realized—that the deficit of 1861-62 would prove to be "the last of the long series of Indian deficits."

My predecessor, Mr. Laing, addressing this Council in 1861, spoke with a just horror of a chronic deficit in time of peace. Mr. Laing graphically described such a deficit as a "huge bully, with whom weary rounds must be "fought, who must never be allowed to claim a cross or a drawn battle, but "who must be gone into and finished." Again, he likened such a deficit to "an "Indian tiger into whose carcase a parting shot must be fired." Lastly, he said that if deficit could *then* be only "extinguished," the Chancellor of the Exchequer might "renounce his taxing art, and like Prospero bury his magic "wand fathoms deep." And surely enough he *did* succeed in drowning deficit

for a time. For that year there was a deficit so slight as to be inappreciable. For the two following years there was a surplus. For the next year, too, there was but a small deficit. But now for two years past the deficits have reappeared. And for the current year I shall have to tell the old tale of deficit. Thus, alas! deficit, though scotched, was not killed after all. But the "bully" of Mr. Laing's time is in these days up in arms again; the "tiger" has come back to life; the smouldering flame not finally "extinguished" has burst out again in our finances.

I now come to the second part of my subject, the current year nearly expired, 1868-69.

The budget estimate for this year presented by Mr. Massey showed the receipts at 48½ millions. But as the year has advanced, and as the known figures of eight months out of the twelve have enabled us to correct the budget estimate, we have been obliged to bring up the anticipated amount to 49¼ millions, showing a satisfactory augmentation of ¾ of a million. The increase distributes itself in a normal and natural manner over the many branches of our income.

The only items which I shall select for notice are customs and opium.

In round numbers the budget showed 2½ millions for customs; the regular estimate shows 2¾ millions, or an increase of ¼ of a million, which is very satisfactory so far as it may indicate the progress of trade. The budget estimate for 1868-69 was taken at 2½ millions, being in excess of the preceding budget (2⅓ millions), notwithstanding that during the year there had been numerous remissions of petty duties, some 40 articles having been removed from the list of dutiable imports, and 88 articles from the list of dutiable exports. Still the budget estimate rose, just confidence being felt in the elasticity of the trade. But this rising budget has, as we have just seen, been outdone by the probable results, the estimate of 2½ being brought up to 2¾ millions. The increase is almost equally distributed among our principal ports, Calcutta, Bombay, Madras, and Rangoon; and also between the two headings of imports and exports. There is increase in the fiscal yield of such imports as silks, as metals, as stores and materials. The importation of English piece goods has been well sustained; but unfortunately the drought and distress in northern India affecting many classes of Natives who are customers for our English fabrics, has caused many markets in the interior of the country to be slack and dull.

While on the subject of customs, I shall note that we have recently issued for the first time a volume of the statistics of the foreign trade and naviga-

tion for British India, prepared after the model afforded by the Board of Trade in London. Whatever may be said as to the deficiency of current statistics in India, such remarks will no longer apply to the returns of our foreign trade. Now, what does this volume show? Why, that the total foreign trade (merchandize and treasure) amounted to 101 millions in value in 1867-68, against 95 millions in the preceding year, showing an increase of 6 millions, or 6 per cent. Just nine years ago in 1860, Mr. Wilson, when describing the financial dangers of that era, mentioned as a pillar of strength the fact that in three decades of years (that is, 30 years) the trade had sprung from 14 millions sterling in value to 60 millions. Since then another decade has passed away, the 60 millions total has risen to more than 100 millions, and the trade is still rising fast. Again, in Mr. Wilson's time, the customs revenue was just under $2\frac{3}{4}$ millions. It is a little over that now: and this notwithstanding that the duties have been reduced from 20 and 10 per cent. to $7\frac{1}{2}$ and 5 per cent., and that full 130 articles have been wiped out from the list of dutiable merchandize at the Customs House! Although only one-half or one-third of the old rate of duties is now taken, nevertheless the revenue has more than recovered itself within nine years.

Further, these latest trade returns disclose some striking facts indicative of that sort of prosperity which is the real basis of national finance. For instance, India is now taking annually full 20 millions sterling worth of English fabrics, cotton, silk, and woollen. On the other hand, she is sending away annually to England and the colonies some 8 millions sterling worth of her agricultural produce, grains, seeds, and fibres, skins and wool. This, too, is exclusive of opium and cotton. The manner in which the exportation of cotton—on which the wealth of Central and Western India so largely depends—has been sustained, even since the close of the American war, is remarkable. Before the war, that is, before 1861, India used to send to England not more than one-fourth of the quantity which America sent. During the war, while the American production fell off, India exported as much as a million and a half of bales a year, and is still sending but little less than that quantity. The American cotton has now of course regained somewhat of its former position. But still the quantity seems hardly to exceed the $1\frac{1}{2}$ or $1\frac{1}{4}$ million of bales which India now contributes. The great position which India is acquiring in the cotton marts of England is owing not only to the stimulus afforded by the American war, but to the efforts persistently made by the British Government through its own Special Commissioners to improve the culture of the indigenous staple, to ensure the produce being properly cleaned and packed, and transported without damage to the seaboard: all which is aided by the pressing with European machinery fast

springing into use in the interior of the country. Again, the progress is remarkable with the articles produced in India chiefly through the exertions of our own countrymen. For India is now sending away annually 8 millions of pounds of tea and 37 millions of pounds of coffee; while the value of her indigo export is nearly 2 millions sterling per annum, and of her silk $1\frac{1}{2}$ millions. That these results should be achieved through the direct agency of a handful of non-official English gentlemen, is one among the many wonders of the time.

Next, for opium, in round numbers the budget estimate showed under $8\frac{1}{2}$ millions: the regular estimate shows upwards of $8\frac{3}{4}$ millions, being an increase of half a million. This arises not at all on the Malwa or Bombay opium, but almost entirely on Bengal opium. So far as can be seen, the Malwa opium is yielding much about the amount that was anticipated. The duty being a fixed duty of Rs. 600 a chest, the fiscal yield depends entirely on the number of chests sent for exportation; and that number has as yet corresponded closely with the estimate. But the prices obtained at the Calcutta opium sales have gone considerably beyond the budget estimate. In that estimate Mr. Massey assumed a price of Rs. 1,250 (£125) per chest. For the previous year he had assumed only Rs. 1,150. Finding that this latter estimate had been exceeded by the reality, he decided to go higher for this year, and so he took Rs. 1,250, an apparently high rate, according to experience of several recent years, expressing, however, a good hope that this enhanced estimate would prove moderate and would be outdone by the reality. And surely enough it has been so outdone. For up to date the auction prices have averaged Rs. 1,380 a chest, and sometimes have even over-topped the high price of Rs. 1,400. Further, this fiscal increase has accrued notwithstanding that the Bengal authorities have only been able to bring 47,235 chests into the market instead of 48,000, or 765 chests short of what was to have been expected. This deficiency of supply was caused by the shortness of the crop of last year in the Behar Province, which for want of seasonable showers was less than it should have been on the area under culture.

The receipt side for 1868-69 being thus satisfactory, how stands the expenditure side? Now, here the first noticeable feature is this, that the ordinary expenditure of all kinds, according to the improved definition, has risen from $46\frac{1}{2}$ millions in the budget estimate to $50\frac{1}{4}$ millions in the regular estimate, showing an increase of $3\frac{3}{4}$ millions. But this increase is not really so formidable as it looks; for by the improved classification $1\frac{3}{4}$ million for military buildings and for communications and embankments, which were

excluded from the ordinary expenditure in the budget estimate, have now been included, causing, of course, a corresponding diminution of the extraordinary expenditure. And this leaves 2 millions of increase to be accounted for.

Now, the Council will be glad to hear that this increase has not arisen upon the ordinary civil and military charges incurred in India. On the contrary, these heads of charge show rather a saving than otherwise. For instance, the regular estimate shows a reduction on the budget of £60,000 under the charge for collecting land revenue; of £50,000 for collecting the salt revenue; of £75,000 under law and justice; of £70,000 under police; of £100,000 for the army, and this saving has been effected after defraying the extra charges (some £50,000) for the recent expedition in Hazara. All these savings speak volumes for the rigour with which economy has been enforced during the year by the various executive authorities, and for the precision now attained in our system of audit and account. On the whole, the budget expenditure for civil and military charges in India stood at $35\frac{1}{4}$ millions, and the real expenditure comes out at that very sum with but a slight difference. And even that difference is explained by our having paid £200,000 (not originally estimated for) of Berar surplus to the Nizam in the just discharge of our obligations on that score. Much has often been said of the uncertainty of Indian accounts. These figures go to show that as regards the civil and military expenditure *in India*—which is of course well under our control—there is no such uncertainty, and that what is budgetted for under these heads will not materially be exceeded.

Where, then, has the increase over the budget estimate occurred? Why, it is attributable to public works ordinary, to expenses connected with railways, and to unavoidable expenditure in England, as I must proceed to show.

The budget grant for public works ordinary amounted, according to the improved classification, to $5\frac{2}{3}$ millions. The regular estimate shows that expenditure will be incurred up to 6 millions; showing an increase of $\frac{1}{3}$rd of a million. The increase has arisen from various causes, among which may be mentioned the outlay on central jails, and the execution of works for the relief of the population suffering from scarcity in the drought whereby some parts of India are visited.

I have just above stated that $1\frac{3}{4}$ million classed in the budget under extraordinary expenditure had by the new classification in the revised estimate been transferred in the ordinary expenditure. Of this amount, $1\frac{1}{3}$ million is

for the great military barracks. As explained by my predecessor last year, the scheme for new barracks for European troops throughout India was to cost from 10 to 11 millions, and the work was to be done in a period of five years. It is hoped that the estimated cost may not be materially exceeded, but to secure this result the most unremitting vigilance will be needed. Be this as it may, however, the period of construction will certainly be prolonged, for the five years have now elapsed, but the work is not half done; and out of the 10 millions only 5 have been spent, leaving at least 5 yet to be laid out. But the designs had to be elaborated by the best military engineers in India, and then sent to the first sanitary authorities in England for approval. Then new sites had to be selected after long enquiry as to salubrity and the like. Thus, despite every care and anxiety to push on the work, the progress for the first few years was not rapid. More recently, however, the plans having become finally settled, and the establishments fully organized, great progress has been made, and during the current year no less than $1\frac{1}{2}$ million is being expended on these buildings. The result is that noble structures, providing for the married and unmarried soldier quarters equal to the best to be seen in any country, are rising up at Allahabad, at Lucknow, at Hyderabad, at Poona, at Bangalore, at Indore, and at many other stations. Nothing that science can suggest to make these quarters healthy and comfortable for the troops has been omitted. At the present rate of progress and of expenditure, it is hoped that the work will be finished some six years hence, which with the years already occupied will make a period of eleven years.

Out of the 5 millions as yet spent on the barracks, whether the greater part has been really borrowed or not, I shall presently explain. But the remainder, amounting to some 5 millions, is certainly to be provided for from the revenues without any borrowing on this account. This is a matter lying at the very root and foundation of the Government itself, to which our fiscal resources ought primarily to be devoted. The provision thus required is therefore one of the most pressing needs of the day. And as days are like years in the life of a nation, the meaning is, that the need of the day shall in this respect be met financially in the day, and shall not be put off till the morrow and the day after the morrow. At one time indeed there was hope that inasmuch as this was special expenditure, the advantage of which would be felt for ages to come, the whole cost should not fall on us now living, but should by the process of borrowing be partly transferred to those who shall come after us. But reflection shows that those who come after us will have plenty to pay for without paying for any part of these barracks! Will any one say that when these barracks are finished there will be nothing

more of importance to be done in this direction? Is there not sanitation to be carried out at our cantonments and stations to an extent which at present can be but dimly fore-shadowed? Are there not our coast defences and fortifications to be provided for? Is there not our marine to be strengthened, a subject which has been alluded to more than once in this Council? Again, by reason of so large a proportion of our means being appropriated to military buildings, the expenditure on some other kinds of public works, especially roads, has unavoidably lagged and halted. Recently we have not spent quite so much as we once were spending on our internal communications. When, therefore, the financial pressure for military buildings shall be somewhat lightened, renewed vigour will be required for the roads, particularly those which are called railway-feeders, as leading from the interior of the country to the various stations,——which are to supplement our railway system, and to be, as it were, the veins to the main arteries.

Speaking in 1867 regarding this very barrack expenditure, Mr. Massey made a remark which is so apposite and judicious that I shall quote it here. He said: "I should have preferred going on as hitherto defraying this charge, "special and temporary as it is, out of the revenues of India. If a financier "were to lay down any precise rule of separation between ordinary and extra- "ordinary charge, there is scarcely a year in which he might not have a "plausible pretence for transferring charge from revenue to capital account. "I do not know how long such a process might go on. But sure I am that "sooner or later it would end in a collapse of public credit."

Such was the dictum of Mr. Massey, to which I heartily subscribe. The principle on which canals and State railways are provided for by loan is intelligible. But if barracks are to be thus treated without any clear principle and removed from ordinary expenditure, then I know not what item might not be next removed, till at last we embarked on a course of borrowing that would be fit only for bankrupt exchequers.

There is one instance of decrease under the head of public works, which is this: the item of "loss by exchange on railway transactions" has fallen from £122,700 in the budget to only £29,700 in the regular estimate. At present the practice is this: in India our exchequer advances all that is required for the construction of the railways, and receives all the traffic receipts, in virtue of arrangements originated so far back as 1849. Both our payments and our receipts are accounted for to the principal railway companies at a fixed contract rate of 1*s.* 10*d.* for the rupee, a rate as yet below the actual exchange and below the exchange of two shillings for the rupee, which for convenience

sake is adopted in all the accounts between the Secretary of State and the Government of India. Thus there is a loss on all our payments and a gain on all our receipts,in the present state of the exchanges. As yet our payments exceed our receipts and the loss therefore exceeds the gain; the net result being as shown in the statement. Hereafter, when, as we may hope, the net traffic receipts shall exceed the advances for construction, the loss will disappear, and in its place there will be gain on exchange. Meanwhile the loss in this year has been less than the estimate, partly by reason of increased traffic receipts, and partly because the advances for construction have been less than what was expected.

The several items of public works ordinary which I have thus described make up the total to 6 millions, which total amounts to about 12 per cent. upon the revenues.

The next noticeable item is that of "guaranteed interest on railway capital, less net traffic receipts," which has risen from $1\frac{1}{4}$ million in the budget to nearly $1\frac{2}{3}$ million in the regular estimate; or showing an increase of nearly half a million. This has arisen from the estimate in India for gross traffic receipts being less than what was originally expected.

This technical description is really pregnant with significance as representing transactions of mighty import. For what does it signify? Why, it signifies that on 77 millions of capital raised for the construction of railways in India, there accrued during the year $3\frac{3}{4}$ millions of interest due to the shareholders under guarantee from the Indian Exchequer; that the gross traffic earnings of the year on 4,000 miles of railway opened in India amounted to $5\frac{3}{4}$ millions paid into our treasuries, reduced by the exchange to $5\frac{1}{4}$ millions; that the working expenses, amounting to 3 millions, left $2\frac{1}{4}$ millions of net traffic receipts; that the $2\frac{1}{4}$ millions net traffic receipts deducted from the $3\frac{3}{4}$ millions of guaranteed interest left a sum of $1\frac{1}{2}$ million shown above as ultimately debitable to the finances of the year. Originally there used to be doubts as to whether the natives of India would adequately appreciate railways. The truth is that during this present year the public in this country is voluntarily paying 6 millions sterling to obtain the advantage of railway conveyance for passengers and goods—that in the year some 3 millions of tons of goods are conveyed by rail, and that the return of passenger journeys amounts to 16 millions. As regards the national growth of British India, it is difficult to conceive figures more eloquent than these!

In the first budget statement ever submitted to this Council in 1860, Mr. Wilson gave the gross traffic receipts for that year at a little over $\frac{1}{2}$ a

million, and the working expenses at a $\frac{1}{4}$ of a million, leaving a net receipt of something over a $\frac{1}{4}$ of a million. This he declared to be "a most gratifying fact, one which augurs well for the future." Would that he were now alive to hear that in this the tenth budget statement submitted to this Council, the $\frac{1}{2}$ million of gross receipts had grown to near 6 millions, and the $\frac{1}{4}$ of a million of net receipts to between 2 and 3 millions,—that within ten years the increase had been tenfold or nearly elevenfold!

The last item to be noticed is that of net expenditure in England, including stores, which has risen from $6\frac{1}{3}$ millions in the budget to $7\frac{1}{4}$ millions in the regular estimate, showing an increase of more than $\frac{3}{4}$ million. This account being received from the Secretary of State must be implicitly accepted. The augmentation has arisen under various heads, such as the Indo-European telegraph; the marine stores; the passage of officers and troops overland. There is one important item actually incurred and not provided for in the budget, namely, £92,000 for the construction of two monitors or floating batteries for the defence of the Bombay harbour. Considering the needs of that harbour, we feel particular pleasure in admitting this item into our accounts of the year.

Thus I account for an ordinary expenditure of $50\frac{1}{4}$ millions, which, as compared with the ordinary income already shown, $49\frac{1}{4}$ millions, leaves a deficit of just 1 million.

Under the head of extraordinary public works the first item is the outlay on irrigation works, for which £800,000 were provided in the budget, but on which £852,000 are being expended in India. One main cause of the increase is the amount advanced by the Government to enable the Irrigation Company of Orissa to prosecute its life-giving works during a period of awful distress in that province, and by the immediate outlay consequent on the prosecution of these operations being undertaken by the State.

The next item is that of nearly $\frac{1}{2}$ a million for special works at Bombay, which item really represents advances from the treasury for certain reclamations and other operations on lands at Bombay,—advances which we hope to recover hereafter when the value of the said property shall be realized.

Under the same head we have, subject to the approval of the Secretary of State, opened out a new heading, which was not provided for in the budget, and that is "State Railways." These are reproductive works calculated to yield an actual income to the State sufficient ultimately for the provision of

some interest on the capital outlay. In his statement before this Council last year, Mr. Massey alluded to the commencement, by direct governmental agency, of the construction of the railway from Lahore to Peshawur. Though important preliminary arrangements have been made during the year for this line, yet the expenditure is trifling, only £12,000. The sum which now appears in the regular estimate, $\frac{1}{2}$ a million, is nearly all for the Calcutta and South-Eastern Railway, which, as the Council knows, runs from this city to the new Port Canning on the Mutla river. This line has been taken over by the Government at a charge amounting in the aggregate as above. Of this, nearly £200,000 have been incurred in India, and the rest in England. At first the line was unremunerative, but under its present good management it begins to pay its working expenses.

The total extraordinary expenditure, including the sums above mentioned for irrigation, for special works at Bombay, and for State railways, will amount to $1\frac{3}{4}$ million. This exceeds the corresponding expenditure of the preceding year, 1867-68, which was under $\frac{3}{4}$ of a million.

On the whole, the grant for the public works ordinary and extraordinary of the year amounted to close upon 7 millions, and is about as large a grant as has ever been made. But it is being exceeded by the expenditure, which will amount to $7\frac{3}{4}$ millions, the excess being $\frac{3}{4}$ of a million, and the expenditure being decidedly the largest ever yet attained in one year. It is important to notice this, because in former budgets consideration has been justly had to the probability of the grants or allotments for public works not being fully used.

The result of the regular estimate, then, is an ordinary expenditure of $50\frac{1}{4}$ millions, which with an extraordinary expenditure of $1\frac{3}{4}$ millions swells to 52 millions. The $50\frac{1}{4}$ millions of ordinary expenditure, compared with the revenue of $49\frac{1}{4}$ millions already exhibited, shows a deficit of 1 million. The 52 millions, including extraordinary expenditure, shows a deficit of $2\frac{3}{4}$ millions. The Council will remember that the budget estimate showed a total expenditure, ordinary and extraordinary, of $49\frac{1}{2}$ millions, against a revenue of $48\frac{1}{2}$ millions, with a deficit of 1 million. But as the year advances, it is seen that this deficit is becoming more than doubled in the regular estimate, and the expenditure of the year is exceeding the budget by $2\frac{1}{2}$ millions. I may state in recapitulation of what has been already explained that this excess has hardly at all arisen on civil and military expenditure in India, but has really arisen on the purchase of a railway by the State, on the guaranteed railway interest, on public works ordinary, and on the expenditure in England.

The Council will remember that in his statement of last year, Mr. Massey mentioned that we should begin this twelve-month with £800,000 in hand, unexpended balance of loans, and expressed a hope that no borrowing would be resorted to during the year. It will now have been seen that the above balance has been more than used up for irrigation alone. Besides that there have been the other extraordinary works above described. And it has accordingly been found necessary to borrow to a limited extent in England, that is, about $\frac{3}{4}$ of a million.

Raised in England ..	£1,236,000
Less debt discharged ...	£ 502,600
	£ 733,400

We began the year with a cash balance as now actually ascertained of 12 millions, which was at that season enough, and no more. Besides the increase of the deficit, these balances were reduced to the lowest ebb compatible with safety, by an important cause which I will now mention.

During the past and the present years (1867-68 and 1868-69) the Indian Exchequer has had to advance most of the sums required for the expedition to Abyssinia. These advances from first to last have amounted to about 7 millions, being fully 2 millions more than the anticipation. This aggregate represents only the sums chargeable to the English Government, exclusive of the ordinary pay of the troops that proceeded from India, which is chargeable to India. With such events in progress, all foresight as to the total amount was of course baffled. These sums are recoverable from Her Majesty's Exchequer, and they are being duly recovered from time to time; the greater part indeed has now been repaid. But as the advances had to be made on the instant, and as the recoveries must necessarily occupy some little time, the pressure meanwhile became severe on our treasury. As temporary emergencies arose, the Bank of Bengal and the new Bank of Bombay rendered aid, partly with their own available balances and partly with the balances which the State has to keep with them under the agreements. Besides this, the Bank of Bengal afforded temporary and special loans which from first to last aggregated $1\frac{1}{4}$ millions. These loans have been already paid off in part, and the rest is in course of repayment.

Further, the accounts of the expenditure incurred in India for Abyssinia are being made up at Bombay. Although the forces only in July last returned from the expedition, yet by this date some 6 millions, or nearly the whole of the expenditure, have been adjusted and passed. Those who remember how the accounts of former campaigns in Affghanistan, in the Punjab, in China, used to drag their length over years and years, will appreciate the changes which have been introduced into the account department.

Thus ends the year 1868-69, with a deficit on ordinary income and expenditure, being the third consecutive year on which deficit is leaving its mark.

The deficits of the three years amount to just 4½ millions, total deficiency *on income and ordinary expenditure, viz.*, the deficit in 1866-67 of 2½ millions, that in 1867-68 of 1 million, that in 1868-69 of 1 million. These are, of course, exclusive of the extraordinary expenditure since 1867-68 on reproductive works, which I do not reckon here at all.

But how has this aggregate deficit of 4½ millions been met? Why, by loans. During these three years, 6½ millions have been borrowed either in India or in England and added to our national debt. Of this sum there were 2 millions expressly borrowed for extraordinary and reproductive works, and certainly this money has been fully and fairly devoted to its proper purposes, for during the three years the total outlay on irrigation and on the Bombay special works have exceeded 2 millions; indeed it has come up to 2½ millions. Besides which one railway has been purchased for ½ a million. So that in truth we have spent 3 millions for these reproductive works. Again for the barracks 3½ millions have been expended within the three years. Thus the loan money is fully accounted for.

		India.	England.	Total.
		£	£	£
1866-67	...	600,000	2,641,900	3,241,900
1867-68	...	1,329,800	1,163,907	2,493,707
1868-69	...	......	724,000	724,000
			Total ...	£6,459,607

On the other hand, as the barracks are now included in the ordinary expenditure, the 3½ millions spent on them within the three years may go far to account for the 4½ millions of deficit. In other words, it may be said that the balance of the loan after defrayal of the reproductive works expenditure—which balance amounts to just 3½ millions—has gone to make good in part the deficits between income and ordinary expenditure.

From this point of view we might hold that had it not been for the barracks, the deficits on ordinary income and expenditure would not have occurred, and these loans would not have been necessary. But it would thence follow that the new barracks have for the most part been constructed from borrowed money.

When my Right Hon'ble predecessor (Mr. Massey) spoke of surplus or equilibrium during these years, he was correct according to the view then adopted, whereby the barracks were excluded from the account. Now, however, that it has been decided, with the express sanction of the Secretary of State, that these are to be included, we must face the plain fact that we have been and still are in a state of deficit. It is essential to place this fact in a clear light in order that we may adequately arrange for the coming year. For the difficulty, though not serious, is yet such as to demand decisive measures for its immediate termination.

But while giving this explanation in justice to what has been previously done, I do not at all mean to admit that the barracks *ought* to be selected as *the* cause of deficit. On the contrary, I say that barracks ought *not* to be thus singled out from our general expenditure.

Before quitting the present year, I must crave a few moments for the mention of one or two administrative measures connected with finance.

The circulation of the State paper currency has now risen above 10 millions, it has more than once approached 11 millions. When the Government took this matter up six years ago, the total note circulation of the several Presidency Banks amounted in all to $3\frac{1}{3}$ millions. Within this period, then, the circulation has trebled, and has now reached to about one-third of the amount, 30 millions, which its founder, Mr. Wilson, contemplated as the possible limit to which paper currency in India might ultimately expand. It has established itself not only at the Presidency towns, but at the great centres of the interior of the country, such as Allahabad, Lahore, Nagpore, and Kurrachee. During the year, we have, by purchasing $\frac{3}{4}$ million of public securities—virtually reducing the national debt by that amount—raised that portion of the reserve from $3\frac{1}{4}$ millions to 4 millions, the limit allowed by law. This measure was justified by the steady expansion of the circulation. The gross profits to the State from the Currency Department will amount to £170,000 annually. The notes, too, are used by merchants to the value of some millions annually for purposes of remittance, whereby great convenience has accrued to trade. Further improvements in the arrangement of circles of issue in order to facilitate the convertibility of the notes are under consideration.

The amount realized from the sale of waste lands now amounts to £300,000. This has been invested in Government Securities, public debt to this amount being regularly cancelled. This seemed necessary in order to give full effect to the intention of the law.

The provision of an effective gold currency for India has engaged our earnest attention. The offer of 10 Rupees for the sovereign at our treasuries by the Notification of 1864 having been found by experience to be insufficient to attract sovereigns and to fulfil the declared intention of facilitating the circulation of that coin, we determined in November last, to offer, 10 Rupees and 4 annas for the sovereign—a rate more nearly approaching to its intrinsic and market value. This measure has met with some success, for already upwards of 100,000 sovereigns have been received at our treasuries and taken out again by the public. We have also removed the prohibition existing since 1852 against

receiving at our treasuries the gold pieces coined under Act XVII of 1835, of which coin numbers (more than $1\frac{1}{2}$ million) have been and still are being coined at our mints in exchange for gold bullion received from the public; a sure proof of the popular demand for them. Thus, by improving the rate offered for the sovereign; by assimilating it to the standard established by law for coinage of gold in India; by restoring the status which the Indian gold coins properly possess, and which they only lost casually in 1852, we hope to obtain such a circulation of gold coins in India as may hereafter justify their being declared to be legal tender. I cannot pass from this topic without recounting the aid derived from the special knowledge and experience of Mr. Dickson, Secretary to the Bank of Bengal, and of our colleague His Excellency Sir W. Mansfield. Indeed, if India, by the means now adopted, shall enjoy the benefit of a gold currency, that will be largely owing to the exertions of His Excellency.

The Government Savings Banks at the three Presidency towns are flourishing: they have in all some 25,000 depositors, chiefly native, and some £650,000 of deposits. Their success has encouraged us to devise measures for the ramification of these institutions throughout the interior of the country.

The "Money Order Department," established on the model of similar departments in England, has attained a considerable development throughout India. Its transactions during the year amount to an aggregate of a million sterling. The further expansion of the system is under consideration.

In the Postal Department we have decided to carry half a tola, instead of the quarter tola, for $\frac{1}{2}$ an anna. This concession to the public is justified by the increase of correspondence since the reform of the postage in 1854, the number of covers, public and private, having risen from 30 to 70 millions annually; the receipts from private postage having risen from £200,000 to 400,000 per annum, and the department having so extended as to cover 50,000 miles of communication and to number 20,000 employés.

Following the postal principle, we have substituted for the Electric Telegraph fixed rates for all distances, instead of the former tariff, variable according to distance. Accordingly, a message of ten words can be sent to any part of India for a rupee. It is hoped that a stimulus will be hereby applied to telegraphic communication in this country.

The prices commanded in the market by our Government Securities have been satisfactorily high. During the current year the premia on the Government 5 per cent. stock have ranged up to 10 per cent.; those on

the 5½ per cent. stock up to 15 per cent. The prices of the Indian stock created in England appear to have been at least as favorable, perhaps even more so. These rates indicate that our credit stands as high as, or higher than, ever, and will bear comparison with that of other prosperous nations. Such facts, too, contrast happily with the state of things but a few years back, when our stock was at discount, and when our open loans would not fill! But this credit, so mighty a resource to Government as well as to individuals, can only be maintained by our ensuring public confidence in our firmness and resolution to produce an equilibrium of income and expenditure.

I must acknowledge, after trial and proof, the remarkable improvements introduced into our system of audit and account by the commission from England, consisting of Messrs. Foster and Whiffen, appointed at the instance, and acting under the supervision of my predecessor Sir Charles Trevelyan.

I have given much thought to a subject which has long engaged the attention of the Government of India, namely, the financial relations between the Central Government of India and the Local Governments of Madras and Bombay. I cannot say more at present, as the question is still under consideration.

I have now cleared the way for dealing with the third and the most interesting part of my subject, namely, the budget estimate for the coming year, 1869-70. I shall touch first on the receipts and then on the expenditure.

The total of the revenues for the coming year is taken at 49⅓ millions, being a little over the amount which we are receiving for the present year. This total of 49⅓ millions is the highest at which the revenues of British India have ever been set down, and it exceeds by ¾ million the budget estimate presented this time last year. The Council will be doubtless gratified to see that I am able to present such a statement. Still a glance at the main items of revenue will show that the estimate is scrupulously moderate. The great heads of Land Revenue, of Customs, of Salt, of Opium are all taken at fairly low figures. If the seasons had been less unpropitious than they have been, then these amounts might have been higher. If we shall hereafter be blessed with copious and timely rain, the estimate of income may be fortunately exceeded.

Regarding those items which depend on the state of trade, we have framed our estimate after consulting all the best informed authorities on the spot, and after revising the tariff valuation, in order to suit the depressed prices obtained for various staples of commerce.

Regarding those items which depend on the state of the harvests, we have looked to the consequences of the drought by which some parts of India have been suffering. The recent rains—life-sustaining, though so long delayed—with which the country has been refreshed, have no doubt improved our prospects. The gloom which overspread some provinces has been brightened, and drooping spirits have been resuscitated among an industrious population which had for months been gallantly struggling with adverse circumstances, alternating between hope and despair, and striving with fortitude, diligence, and foresight to supplement artificially those resources which the natural seasons had failed to afford. At this crisis the railways have been of signal service to humanity, for they have carried, first and last, some fifty thousand tons of grain food to the hunger-stricken districts during this season. The Ganges and Jumna canals, too, have during the year nearly doubled their irrigation, and have watered nearly a million of acres. So praiseworthy have been the efforts of the people that even now, at this late hour, it is thought that the worst for which we were so fully prepared may yet be averted, and that if only a bountiful rain shall be vouchsafed next season, the country will recover from the effects of the visitation. In that case, the agricultural resources on which our land revenue depends may not prove to be impaired, and the tolerably favorable estimates now presented may stand good. But if the next rains shall be at all unpropitious, and a second misfortune be piled upon the first, then the result will be too sad and serious for anticipation.

These considerations have specially affected the opium revenue. The province of Behar, the very home of the poppy, has been among the most drought-stricken districts of all. The crop, short last season, will be shorter still this season. The number of chests brought to sale this year has been below the standard* by some hundreds of chests; next year it may be deficient by some thousands. For Bengal opium the exact number of chests has been taken month by month. This number is certain for three-quarters of the year. The uncertainty is in the price to be realized per chest. The average price has been assumed at Rs. 1,330 (£133) per chest, that being about the average actually realized during the past three years, though less than the average, Rs. 1,380 (£138) per chest, obtained during the current year. For the Bombay opium, the full amount has been taken according to the experience of the present year. The total result of the opium revenue has been further tested by the gross average of the past three years, which, amounting to $8\frac{1}{3}$ millions, sufficiently bears out the sum, $8\frac{1}{4}$ millions, now set down. Thus, although the sum estimated for the coming

* 48,000 chests.

year is ½ a million less than that which is being realized in the current year, and is below the average of the three past years, thus showing a really cautious estimate, yet it is as high a sum as could safely be taken in the face of the deficient supply with which we are but too certainly threatened. The Council will see that the whole of the expected revenue has been taken credit for without any reserve being formed.

The Government of Bengal is taking active measures for increasing the supply of opium for the China market to 50,000 chests annually, and for securing a reserve supply (of at least 10,000 chests) which may assure the public as to the quantity to be brought to sale, and may conduce to the checking of undue speculation in prices. There is fear that unless the supply can be improved next season after these two deficient seasons, the cultivation of the poppy in China itself will be stimulated. For some time past positive accounts have been received of the increase of this culture in China. So it is clear that unless Bengal produces enough opium, the Chinese will raise it for themselves. And if the Chinese will have opium, they may as well get it first rate from us, as second rate at home, and they may as well consume it taxed as untaxed. Again, if they do not procure it from us, they might procure it from other countries of Asia. The culture of the poppy in Persia is increasing, and some 4,000 chests are exported annually from that country to China. The propriety of substituting an open excise system in Bengal for the present direct governmental agency has been under consideration. But the propriety of such a change on either moral or practical grounds is not as yet established to our satisfaction. On the other hand, it is a serious thing to make a change in a case where such critical interests are concerned, where despite fluctuations the fiscal progress has been so great and so steady, and where the system works well to the satisfaction and contentment of the peasantry concerned in the cultivation.

The revision of the salt duties throughout India has engaged and is still engaging our anxious consideration. The inequality in the rates of duty and the market prices of such an article as salt in different portions of the empire is indeed to be deplored. But though there are present obstacles, financial and other, in the way of equalization, we shall bear this steadily in view as an object for ultimate attainment. But after all, what the northern people want, even more than reduction of duty, is increased facility of supply by the construction of railways to the saliferous tracts and by the encouragement of local manufacture of salt—to all which matters immediate attention is being afforded.

As the Council knows, there is a revision going on of the schedules of the Stamp duties; but no provision has been made for the fiscal effect of any changes, as they have not yet been finally determined.

The item of assessed taxes I shall reserve for separate mention after the balancing of income and expenditure.

Such, then, being the receipts, how stands the expenditure for the coming year?

The total of ordinary expenditure is set down at 49¼ millions, being some fifty thousand pounds below the total of receipts. In other words, there is a real equilibrium between expenditure and income sufficiently assured by the exhibition of a small surplus of fifty thousand pounds. This expenditure is 1 million *less* than the expenditure of 50¼ millions for the current year, 1868-69, incurred for precisely the same purposes, and thus accurately compared.

There is a slight increase, after every practicable retrenchment, in several of the Civil Departments. The Council would be wearied if I entered on the details of this. Suffice it to say that the demands for administrative improvement in every direction are irrepressible; and these involve expense. Again, the general rise in wages and in prices of all things, which have doubled or even trebled within the last few years and are still on the ascendant in most places, has for some time past caused, and is still causing, the former scales of pay and of salaries to prove insufficient. In justice to the many classes of its meritorious servants, the Government has been obliged to concede increase of emoluments to the employés of all grades, from the lowest upwards, in all departments, from 15 to 30 per cent. The only general exception to this has been the case of the Covenanted Civil Service, of which the emoluments remain much as they were.

There are only a few items of expenditure which need now be noticed. That for Police amounts to nearly 2½ millions. The Police of India under its new organization was originally estimated to cost 2 millions; the subsequent tendency to increase has been largely owing to the establishment of Municipal Police.* Much care will be needed if the sum total is to be kept down at its present figure. The educational grant stands at upwards of £900,000, or nearly a million, being slightly above the expenditure of the current year. The allotment for Law and Justice, including prisons, now exceeds 2¾ millions; and is

* For the charge for Municipal and Railway Police there is a set-off on the receipt side of £300,000 for municipal and railway contributions credited to the State.

constantly increasing from the creation of new courts and departments. The grant for medical services has risen about 15 per cent. within the last two years. This is owing to the substantial recognition of the medical profession by increased pay, and to the position which sanitation is fast asserting for itself. The cost of forest conservation is also rising: this is attributable to the organization of professional forestry, and to the husbanding of that vast wealth in timber with which Nature has endowed the continent of India.

The military expenditure in India is estimated at upwards of 12¾ millions, being almost the same amount as that which is shown for the current year. This is of course exclusive of some 3¼ millions of expenditure in England. The sums of 21 and of 16 millions are the highest annual figures which our military expenditure in India has reached. After the great retrenchments which took place between the years 1860 and 1863 upon the above amounts, the sum of 12¾ millions (in 1863-64) is the lowest figure to which our military expenditure in India has fallen. Since then the charge has slightly increased, notwithstanding that the European force has been reduced by some 7,000 men. It might be expected that such a reduction of force would have caused a considerable reduction of expenditure. Instead of this, however, there has been an *increase*, despite constant efforts to keep down the charges,—a fact which points to the need for redoubled economy. The increase, so much to be regretted, is in part attributable to unavoidable causes, such as;

the warrant regarding the clothing and pay of the European troops and the inducements to re-engagement at an earlier date;

the increased subsistence allowance to the wives and families of European soldiers;

the additional pay allowed to native commissioned officers; the grant of good conduct pay to the sepoys at an earlier date; the continuance of batta to men on leave; the increased rates of hutting money;

the increased pay of medical officers, of the medical staff and establishment, the re-organization of the warrant or subordinate medical establishment;

the abolition of half batta;

the net cost of the staff corps;

the compensation to native troops for dearness of provisions.

These main items have caused an increase of annual charge by £950,000, to counterbalance which further savings are required, if such can possibly be

made. Certainly there are categories of increased charge which call for restraint. The commissariat charges, though in some places creditably economical, are hardly so in all places. The charges of the hospital departments, of the ordnance, of the barrack department, of the stud, of the army and garrison staff, are constantly mounting upwards.

The charge which some years hence will accrue to the State from the present organization of the staff corps of India has engaged our anxious care. The question as to what measures should be adopted in [illegible] hereto is still under consideration.

Doubtless the growth of army expenditure, though slight and gradual, requires check in every branch and detail, which check we shall assid[illegible] apply.

For public works ordinary, exclusive of railways, the allotment stands at $5\frac{3}{4}$ millions, being just over the amount expended in the current year, and being about the largest grant ever yet made for this important object. It includes nearly $1\frac{1}{2}$ millions for the military buildings, of which the importance has been already explained—an amount which will enable the engineers to maintain the present rate of progress. This category includes all the expenditure for these buildings, of which not a farthing has been transferred to the heading of extraordinary. Further, in public works ordinary, including railways, every kind and sort of item has been included, save those for new irrigation works, for the Bombay special fund, and for State railways, which three items alone have been classed as extraordinary.

The guaranteed interest on railway capital, less net traffic receipts, stands at $1\frac{1}{2}$ millions, making up to about 15 millions the amounts which the Government of India from first to last has paid for the cardinal advantage of possessing railways in the country. Inasmuch as the outlay for the thousands of miles of line yet to be constructed will be going on to the amount of 3 or 4 millions annually, it is calculated that this item of $1\frac{1}{2}$ millions for guaranteed interest will not decrease for many years to come, but may increase to $1\frac{3}{4}$ millions. It is manifest that much depends on the administration of the railways, the merits or demerits of which might easily make a difference of $\frac{1}{4}$ or $\frac{1}{2}$ a million in the State budget of the year. The growing importance of railway finance will hence be apparent to the tax-payers of India. After deduction of the working expenses from the estimated traffic earnings of the coming year, it is calculated that the East Indian Railway will be paying $4\frac{1}{2}$ per cent. on paid-up capital, the Great Indian Peninsular 3 per cent., the Madras Railway 3 per cent., and the other lines from

1 to 2 per cent. It seems clear that some of the lines will certainly pay the 5 per cent., and will relieve the State of its guarantee obligation on more than half of the capital as yet laid out. But the remainder will not pay for some time to come—involving perhaps one-third of the aggregate capital, on which the State will have to pay permanently a part of the guaranteed interest. It is well to remember this, inasmuch as within the next ten years another 30 millions on railways may probably be expended.

Such, [illegible] is the ordinary expenditure for the coming year, which has not been allowed to overbalance the income. But in order to explain exactly how this equipoise has been obtained, I must ask the Council to revert to the [illegible] assessed taxes, of which I just now promised a further notice.

It will be seen that £900,000 are set down as the anticipated produce of assessed taxes for the coming year. The certificate tax of the current year is expected to yield £520,000. The same tax, had it been continued for the coming year, is supposed to be capable of yielding as much or more, say £550,000. But to this has been added £350,000, making up the total of £900,000 shown in the budget. Now, by what means is the extra £350,000 to be obtained? Why, by converting the certificate tax into an income tax. Without this resource our income would fall short of our expenditure by more than ⅓rd of a million, and a deficit to that extent would have been exhibited in this budget. The Government of India, after considering the deficiencies which have occurred in three consecutive years, as I have already explained this day, and after causing the accounts to be made up according to the orders of the Secretary of State, has determined, so far as in it lies, to put an end to deficit. We cannot, at such a time as this, consent to appear before the public with a deficit in our budget. We have therefore preferred the alternative of asking this Council to vote us the power to cover by an income tax the deficit which must otherwise be presented. Such, then, is the proposal which I shall have, on behalf of the Government of India, to submit to the Council, together with a request for leave to introduce a bill for the purpose. The necessity of avoiding debt in time of peace for ordinary expenditure, and of plainly making both ends meet, is the ground on which we mainly base this proposal. The probable occurrence of this necessity was foreseen some months ago, and a reference was made by us to the Secretary of State, whose approval has been received to the course which we propose to adopt.

The principle of the existing certificate tax is in fact that of an income tax on particular classes, so that the substitution of an income tax proper will prac-

tically not much alter the taxation of those who pay the certificate tax. The taxation will be virtually extended to those sections who are now exempt, and will apply equally and justly to all sections alike without distinction. Moreover, the principle of rough assessment, as observed in the certificate tax, should, we think, be maintained, with some modification of detail, in the schedule of the income tax. The mean incidence of the certificate tax was about 1 per cent. on profits; we propose to keep this rate for the income tax also. The limit of income down to which the certificate tax descended, Rs. 500 (£50) per annum, will be observed in the income tax. Servants of Government or of Companies, as well as those of firms and private individuals, were exempted under the certificate tax if their salaries were less than Rs. 1,000 for the year. For the former class the assessment will now be at 1 per cent. on all salaries of Rs. 41-10-8 per mensem, equal to Rs. 500 per annum, and upwards. The latter class will be assessed like their neighbours under the schedule. Pensions and annuities will be similarly assessed. We have introduced various minor improvements intended for the convenience of the tax-payers.

The advantage of keeping up the principle of rough assessment in the schedule is the avoidance of individual assessment, of any inquisitorial process which such assessment may involve, and of the demand for returns of income. The advantage of adhering to the 1 per cent. rate will be this, that those who pay the certificate tax will continue to pay much in the same way as heretofore, without any sensible change, and the avoidance of change is well known to be an important point in dealing with the Natives of India. The advantage of observing the 500 Rupees (£50) minimum limit of income will be this, that the measure will be confined to the upper and middle classes, and will not affect the mass of the people. In that respect the new income tax will be preferred to the old, which went down so far as Rs. 200 (£20) of annual income. It is calculated that not more than 150,000 persons will be assessed to this income tax, out of 150 millions of population, so that the tax will hardly touch more than one in a thousand. In short, our hope is that by eschewing change in respect to those who now pay a direct tax; by refraining from demand for returns; by removing the measure from any contact with the poorer and more ignorant classes, we shall keep it comparatively free from much of the unpopularity which attached to the income tax of 1860, and thus, as it were, rob the measure of its sting.

Should it be thought that the arguments, if good for anything, are good for a 2 per cent. rather than a 1 per cent. rate, the answer is that 1 per cent. seems to be sufficient. It produces an equilibrium after a fair allowance for the

defence and administration of the country, and for moral and material improvement, and after including enough for military buildings to ensure the present rate of progress. The Council will remember that all other taxes ever contemplated have been condemned; that the income tax is our chief fiscal reserve; that in war or other emergency we could hardly assess it at more than 5 per cent., so that now in time of peace we are to use up $\frac{1}{5}$th of our fiscal reserve. It is desirable not to trench more than is absolutely necessary on such a reserve. It is also desirable not to ask the country to bear even a fraction weight of burden more than can be proved to be indispensable.

If it be said that sufficient care is not given to retrenchment of expenditure, and that by a little more cutting and clipping a small deficit might be obviated without putting on an income tax, the answer will be that retrenchment has been already pushed to its reasonable extremity in order to cut the coat of our expenditure according to the cloth of our income. It is perhaps a curious fact that when the materials of this very budget were received from the eight local Governments, the twelve imperial departments, the 225 treasuries, and were collated in the Financial Department at Calcutta, the revenues came out less, while the ordinary expenditure proposed was more, showing a balance against the country. This adverse account has by scrutiny in the Financial Department, and by help of the later and more complete information available to us, been reduced to the equilibrium now presented to this Council. After all, the expenditure in India is taken at less by half a million than what it is for the current year. This may be accepted as some proof of economy in the budget. Further than this we cannot retrench at present. If we were to do so, the parties concerned would during the course of the year remonstrate, and we might be virtually forced to allow items which had been disallowed. We hope to maintain the retrenchments so carefully made; but it would be worse than futile to attempt any retrenchment which cannot be maintained.

If it be supposed that we might have devised other means of improving our resources and thus saved the necessity of an income tax, then I say that no supposition could be more unjust to the Government of India. For we have over and over again thought of every tax that has ever been suggested;—to almost all some insuperable economic objection was apparent—the income tax alone remaining comparatively free from objection, as hampering no particular trade and fettering no industry. We have even refrained from doing some things we wished to effect, such as the abandonment of some of the export duties which are shackles on our domestic industry, the diminution of the rate of import duty on some metals of which the prices are depressed,

the abolition of the inland sugar duties, the reduction of the salt duties in some provinces. We really have postponed the fulfilment of these our cherished desires, in order that the saddle of the income tax might sit lightly and easily on the country.

If it be urged that there is hardship in the imposition of an income tax, when the necessity might be avoided by transferring the cost of the new barracks to the extraordinary category, inasmuch as the work, though heavy now, will soon be finished off and disappear—this argument has been already answered to-day. It suffices to recapitulate that there is no sort of reason why barracks should be selected in such an arrangement more than any other item of our ordinary expenditure; that the work will not be done for years and years to come; that when it is over, other works just as costly will be turning up; that the European troops must be properly housed; that the housing of our soldiers is among the very first charges against our revenues; that the running into debt for such a purpose would be intolerable; that we *must* pay our way to this extent in time of peace, if we are to prove worthy of our status as a Government; and that any such arrangement would be contrary to the orders of the Secretary of State.

Again, if it be argued that the income tax, having been first imposed when the finances were in disorder, ought not to be reimposed now when the finances are flourishing, the reply would be that experience does not show that we can afford altogether to dispense with direct taxation. For, when after a period of deficit a short period of surplus enabled Sir Charles Trevelyan to allow the first income tax to expire, there followed but one year of surplus. Then sure enough deficit reappeared, and Mr. Massey was obliged to propose a license tax (1866-67). Thus, no sooner had the income tax expired, than its resuscitation in another form became necessary. The license tax having lasted for a year, Mr. Massey resisted all demand for its repeal, and continued it in an improved form as a certificate tax. That he was perfectly wise in so doing is proved this day, when I have to come before the Council with the longest story of deficit that has been narrated for some years. The moral of all this is, that the great convulsion of 1857, so fraught with trouble, yet so fruitful in reform, does to this hour make its effects felt, and that the country must brace itself to bear the small sacrifice of a light income tax in consequence.

Lastly, though this income tax is applicable to all alike above a certain limit of income, there are some important classes who immediately occur to our thoughts such as the fundholder in India, the landholder and houseowner, who will be required to aid in bearing a burden already borne for the last two

years by several classes of their fellow subjects. The fundholder in India, conscious that the value of his property in the market so largely depends on the financial credit of the Government, will not demur to a contribution to a tax which in England has been always held to be applicable to income from the public securities. The landholders, especially the zemindars under permanent settlement, convinced from long experience of the inviolable faith kept with them by the State, cannot regard this measure with any distrust, but will submit to the law, if it shall be enacted, with that loyalty which befits gentlemen of accumulating wealth and of liberal education, recollecting that the question of their liability was thoroughly settled long ago, and that in each cycle of years the progress of Bengal—with its staples profitably exported to England, its network of water communication, its patient and thriving peasantry—enhances their debt of gratitude towards the Government under whose sway their property has been so vastly benefited.

The European community for the most part already pay the certificate tax. Their taxation will be changed but little if at all by the income tax. They have shown so much public spirit in respect to direct taxation whenever its necessity was demonstrated, and they are so well aware that financial solvency is one of the first conditions of our political safety in this country, that their support on this occasion is confidently anticipated.

And everybody, European or Native, will, we trust, appreciate the justice of taxing all classes alike without exception.

The question of allotting to the Local Governments a portion of the income tax proceeds for public works has been considered; but the concession cannot at present be made.

So much then for the ordinary income and expenditure.

Besides this, however, there is a proposed extraordinary expenditure of $3\frac{1}{2}$ millions, of which $2\frac{3}{4}$ millions are for the irrigation works, and the rest for the Bombay special works and the State railways. The amount may seem large: but it includes 1 million to be paid in England for the transfer to Government of the Irrigation Company's projects in Orissa and Behar: and $\frac{1}{4}$ million of stores and plant for the Lahore and Peshawur railway. This full sum, if sanctioned by the Secretary of State, will have to be raised by loan. The expenditure in India of $1\frac{1}{2}$ million on irrigation is to be mainly for the noble projects in Orissa, in Behar, in the Cis-Sutlej States, in the basins of the Jumna and the Ganges in Lower Bengal, in the British Deccan, and in other places. This will be the first year in which the principle of borrowing for reproductive works

comes into something near full operation. It must be some time before any return is received for this outlay. And for fear of going too fast ahead, we should pause before exceeding the amount proposed for loan this year. The original cost of these works is already shown in our Budget Statements; the question as to how far it may be possible to show separately the gross income and the current expenses of these reproductive works, is undergoing careful consideration.

Indeed we are launching out on a sea of improvement. The next ten years may see another 40 or 50 millions for reproductive improvements added to the existing 100 millions of our national obligations. Can any fact be more potent than this to prove that we must gird ourselves for the task before us, by establishing that equilibrium between income and *ordinary* expenditure which will be the surest basis of our public credit.

The total expenditure for the year, ordinary and extraordinary, is put at 52¾ millions, the highest figure ever yet reached. It has been sometimes observed that our present form of Budget Statement, (which is, however, authoritatively prescribed,) by showing the expenditure in England in the aggregate, does not exhibit in one view the cost of some great departments whose expenses are incurred partly in England and partly in India. I append a supplementary statement showing the combined expenditure, English and Indian, of the several departments. In this point of view, the cost of the army stands at a little over 16 millions; that of marine at something under 1 million; and the interest on the public debt at 4¼ millions, of which the sum of £180,000 is on capital raised for reproductive works.

I have now to mention what loan arrangements will have to be made in order to meet all this expenditure. On the one hand we have to provide for 3½ millions for reproductive and extraordinary public works as above described; ½ million of public debt to be renewed in England and ½ million in India, or one million to be renewed in all; ½ million to be raised in India to recoup our cash balances for sums lent or to be lent to the Municipalities of Calcutta and other places. These items amount in all to 5 millions, or 3½ millions of new debt, 1 million renewal of former debt, and ½ million of debentures at short currency, which will not add to the permanent debt. These are all subject to the approval of the Secretary of State. On the other hand, 2 millions have already been set down by the Secretary of State to be raised in England. We propose to raise in India ½ a million on long term debentures in renewal of existing obligations; and to issue debentures for

short terms not exceeding one twelve-month, of the nature of exchequer bills, up to ½ a million. By the latter issue we hope to provide for the temporary requirements of the cash balances without trenching on the resources of the Presidency Banks. There remain two millions to be raised, regarding which we shall immediately solicit the instructions of the Secretary of State. In these various ways the amount of 5 millions above stated will be provided for. If we shall have to advance any additional sums to Municipalities during the year, such amount will have to be raised by loan.

With these several arrangements (which are subject, of course, to the sanction of the Secretary of State) we shall probably close the coming year with a cash balance of 11½ or nearly 12 millions, much the same as that with which we are closing the current year. These amounts indicate that our cash balances are not even yet restored to their proper proportions. By the experiment of issuing short term debentures, as above mentioned, we hope to work with a somewhat less cash balance than heretofore. If as the year proceeds the accounts shall be unfavorable, some additional temporary resource will have to be provided.

The last statement to be noticed is that of the cash balances in India. This statement includes not only all the regular receipts, and disbursements in India besides the remittances to England, but also all the "debt," or, as it might better be called, the "deposit." This technical debt has nothing to do with the public or national debt, but it arises in this way. In some respects our Exchequer serves as a great bank of deposit. It receives and keeps the money belonging to the local funds, to the funds, pensionary and others, of the Services civil and military; to the Judicial department; and to a variety of depositors. It serves as general banker to the railways and receives all their traffic earnings. It also acts as a banker for much of its own remittances. In these several ways there is made up a vast aggregate of many millions of deposit receipts shown on one side of the account, balanced by a corresponding amount of disbursements on the other. We shall commence the new year on the 1st April with a cash balance of close upon 12 millions; we hope also to end it with a sum of nearly 12 millions. On the receipt side of the statement there are upwards of 49 millions of revenue; 3 millions to be raised by loan; some 13 millions of deposit, of which latter the 3 millions of our local funds income forms a part. The above 3 millions of loan is exclusive of the 2 millions to be raised by the Secretary of State, which have been allowed for on the other side of the account. Then there are some 3½ millions of other receipts, railway earnings and the like. All these, together with the cash

balance in hand, make up the grand total to 80 millions. This is balanced on the disbursement side by some 43 millions for service in India; by some 14 millions on account of debt and deposit, including some 3 millions expenditure from local funds; and some 11 millions of other payments, including those for the Secretary of State's bills; all which, together with the cash balances, make up a counter sum of 80 millions.

Thus, for the coming year 1869-70, the national balance sheet of British India, including all the transactions of its Exchequer, shows 80 millions on each side of the account, truly a high figure demonstrative of the calibre of our power in the East! And now, with the mention of this spirit-stirring fact, I shall conclude my exposition.

Such is the budget for 1869-70. The main points of the exposition are;

that the entire expenditure on the new barracks is included in ordinary expenditure and charged against revenue;

that on the two years under review, 1867-68 and 1868-69, there has been an actual deficit in 1867-68 of 1 million of income as compared with ordinary expenditure, following a deficit of $2\frac{1}{2}$ millions on the total expenditure the previous year, 1866-67;

that for the year 1868-69 there is a deficit by regular estimate of 1 million;

that for the coming year, 1869-70, after including barrack expenditure, there is estimated an equilibrium between income and ordinary expenditure sufficiently assured by a small surplus;

that a one per cent. income tax is proposed in substitution for the existing certificate tax;

that $3\frac{1}{2}$ millions are proposed to be expended in 1869-70 on extraordinary reproductive works to be provided for by loan;

that $3\frac{1}{2}$ millions are proposed to be raised by loan;

that 1 million of public debt, half in England, half in India, falling due for re-payment in 1869-70, must be renewed;

that $\frac{1}{2}$ million is to be raised by short term debentures to supplement the cash balances;

that the total of loan proposed for the service of the year 1869-70 amounts to 5 millions.

The Government of India has aimed at a financial policy to be at once safe, just, and sound. Safe, as strictly bringing to account of ordinary expenditure, all items properly so chargeable. Just, as tending to apportion more and more equally the fiscal burden between rich and poor. Sound, as guiding all proposals according either to known custom in India or to established principle in England.

The facts and figures of British Indian finance, hard and stern as they may be, do yet bear witness to an agriculture furnishing staples for the use of distant countries; a commerce multiplying itself in every cycle of years; a revenue branching out in various forms of development; an ordinary expenditure held in control, and expanding mainly for useful or beneficent purposes; an extraordinary expenditure designed to bring State capital to bear on the material improvement of the country; a public credit strong enough to constitute a resource for every reasonable need. By their general effect they recall the sentiment of the historian, they excite thankfulness in all thoughtful minds, and "hope in the breasts of all patriots."

The Motion was put and agreed to.

The Hon'ble Sir Richard Temple having then applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir Richard Temple then introduced the Bill.

POLICE SUPERANNUATION FUNDS' BILL.

The Hon'ble Sir Richard Temple then introduced the Bill to abolish the Police Superannuation Funds.

TRANSSHIPMENT OF OPIUM FEE BILL.

The Hon'ble Sir Richard Temple then moved for leave to introduce a Bill for imposing a transshipment fee on Opium.

The Motion was put and agreed to.

The Hon'ble Sir Richard Temple having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir Richard Temple then introduced the Bill.

LAND CUSTOMS' BILL.

The Hon'ble Sir Richard Temple then moved for leave to introduce a Bill to make better provision for the collection of Land Customs on certain foreign frontiers of the Presidencies of Fort Saint George and Bombay.

The Motion was put and agreed to.

CUSTOMS DUTIES' BILL.

The Hon'ble Sir Richard Temple then moved for leave to introduce a Bill to amend the law relating to Customs' Duties.

The Motion was put and agreed to.

The Council adjourned till the 11th March 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. General for making Laws and Regulations.

Calcutta,
The 6th March 1869.

APPENDIX.

STATEMENT OF ESTIMATED CASH BALANCES IN THE INDIAN TREASURIES ON THE 31st MARCH 1870.

RECEIPTS IN INDIA IN 1869-70.	Budget Estimate.	DISBURSEMENTS IN INDIA IN 1869-70.	Budget Estimate.
	£		£
REVENUES	49,340,840	EXPENDITURE IN INDIA	43,157,540
DEBT—		DEBT—	
To be raised on Loan	3,000,000	Payments on account of Debt	13,712,792
Receipts on account of Debt	12,408,724	LONDON—	
		Bills drawn by the Secretary of State for India	8,400,000
LONDON—		Payments on account of Indian Railways	3,255,100
Recoveries in India of Payments in England, Funds, Family Remittances, &c.	1,199,760	Ditto Madras Irrigation and Canal Company... ...	5,500
Madras Irrigation and Canal Company net Earnings ...	7,600	Supplies to Her Majesty's Government	128,300
Net Railway Earnings	2,604,700	Miscellaneous	192,555
Estimated Cash Balances on 31st March 1869	11,917,473	Estimated Cash Balances on 31st March 1870	11,627,310
TOTAL ...	80,479,097	TOTAL ...	80,479,097

FORT WILLIAM;
Financial Department,
The 6th March 1869.

EDWARD GAY,
Offg. Dy. Comptr. Genl. of Accounts.

E. F. HARRISON,
Comptr. Genl. of Accounts.

R. B. CHAPMAN,
Offg. Secy. to Govt. of India.

GENERAL BUDGET

FOR THE

GENERAL ABSTRACT OF THE REVENUES AND

FOR THE YEAR FROM 1ST

RECEIPTS.	Actual, 1867-68.	Budget Estimate, 1868-69.	Regular Estimate, 1868-69.	Budget Estimate, 1869-70.
	£	£	£	£
I.—Land Revenue	19,986,640	20,466,000	20,225,200	20,595,500
II.—Tributes and Contributions from Native States ...	689,286	687,000	693,800	693,200
III.—Forest	331,088	403,900	423,600	436,600
IV.—Excise on Spirits and Drugs	2,238,931	2,211,600	2,310,000	2,289,000
V.—Assessed Taxes	653,848	570,000	520,000	900,000
VI.—Customs	2,578,632	2,441,600	2,713,500	2,773,500
VII.—Salt	5,726,093	6,016,900	5,613,100	5,826,800
VIII.—Opium	8,923,568	8,385,800	8,886,400	8,286,540
IX.—Stamps	2,186,269	2,372,800	2,340,200	2,396,900
X.—Mint	120,252	251,200	163,300	136,800
XI.—Post Office	659,679	671,300	687,600	687,500
XII.—Telegraph	215,031	252,600	218,700	220,000
XIII.—Law and Justice	719,342	1,034,200	1,082,000	865,100
XIV.—Police	231,972	274,300	286,500	301,400
XV.—Marine	455,090	294,500	578,600	248,500
XVI.—Education	73,845	75,100	73,800	83,400
XVII.—Interest	211,975	226,500	231,700	261,600
XVIII.—Miscellaneous	1,127,551	763,200	750,600	966,700
Army—Miscellaneous	742,712	692,400	829,400	730,000
Public Works—Miscellaneous	557,840	496,000	660,700	641,800
TOTAL RECEIPTS ... £	48,429,644	48,586,900	49,288,700	49,340,840
Deficit, including Public Works Extraordinary Charges £	1,610,157	1,026,450	2,801,244	3,513,150
GRAND TOTAL ... £	50,039,801	49,613,350	52,089,944	52,853,990
Deficit, not including P. Works Extraordinary Charges £	1,007,695	..	970,471	......

FORT WILLIAM;
Financial Department,
The 6th March 1869.

EDWARD GAY,
Offg. Depy. Comptr. Genl. of Accounts.

ESTIMATE OF INDIA.

YEAR 1869-70.

RECEIPTS AND OF THE EXPENDITURE OF INDIA
APRIL 1869 TO 31ST MARCH 1870.

EXPENDITURE.	ACTUAL, 1867-68.	BUDGET ESTIMATE, 1868-69.	REGULAR ESTIMATE, 1868-69.	BUDGET ESTIMATE, 1869-70.
	£	£	£	£
1.—INTEREST ON FUNDED AND UNFUNDED DEBT	2,709,972	2,699,700	2,684,200	} 2,794,770
INTEREST ON SPECIAL LOANS FOR PUBLIC WORKS ...	51,861	99,000	99,000	
2.—INTEREST ON SERVICE FUNDS AND OTHER ACCOUNTS ...	824,113	517,330	589,830	518,710
3.—ALLOWANCES, REFUNDS, AND DRAWBACKS	376,466	231,940	502,740	259,370
4.—LAND REVENUE	1,995,950	2,138,700	2,076,380	2,196,790
5.—FOREST	226,416	278,080	270,250	284,850
6.—EXCISE ON SPIRITS AND DRUGS	303,534	261,900	272,890	263,050
7.—ASSESSED TAXES	33,314	21,000	20,050	30,000
8.—CUSTOMS	207,186	186,150	183,480	182,640
9.—SALT	325,520	441,660	389,770	395,270
10.—OPIUM	1,874,121	1,907,780	1,769,330	1,724,330
11.—STAMPS	92,950	101,100	99,820	96,410
12.—MINT	99,366	109,500	95,020	86,470
13.—POST OFFICE	491,690	583,480	617,200	706,120
14.—TELEGRAPH	396,517	442,500	482,310	447,000
15.—ALLOWANCES TO DISTRICT AND VILLAGE OFFICERS ...	385,981	396,520	396,650	345,530
16.—ADMINISTRATION AND PUBLIC DEPARTMENTS	1,124,396	1,140,220	1,148,210	1,205,090
17.—LAW AND JUSTICE	2,544,349	2,857,580	2,782,910	2,869,670
18.—POLICE	2,434,125	2,502,450	2,436,290	2,374,290
19.—MARINE	926,539	558,800	681,630	473,390
20.—EDUCATION, SCIENCE, AND ART	783,510	904,190	855,160	912,200
21.—ECCLESIASTICAL	158,707	162,520	162,760	169,100
22.—MEDICAL SERVICES	352,316	366,970	376,710	413,080
23.—STATIONERY AND PRINTING	222,729	226,400	228,770	227,790
24.—POLITICAL AGENCIES AND OTHER FOREIGN SERVICES ...	241,801	231,050	236,730	235,590
25.—ALLOWANCES AND ASSIGNMENTS UNDER TREATIES AND ENGAGEMENTS	1,873,072	1,948,090	1,912,770	1,886,190
26.—MISCELLANEOUS	672,992	270,700	416,000	393,390
27.—SUPERANNUATION, RETIRED, AND COMPASSIONATE ALLOWANCES	911,256	633,360	827,130	711,600
ARMY	12,603,467	12,904,720	12,803,220	12,850,000
PUBLIC WORKS ORDINARY—				
PUBLIC WORKS	5,430,457	3,458,480	5,640,000	5,677,000
SUPERVISION AND COST OF LAND FOR RAILWAYS ...	156,525	221,390	303,640	159,450
LOSS BY EXCHANGE ON RAILWAY TRANSACTIONS ...	101,877	122,700	29,700	14,600
ONE PER CENT. INCOME TAX GRANT	111,410	......	......	......
	41,044,485	38,925,960	41,390,550	40,903,740
NET EXPENDITURE IN ENGLAND, INCLUDING STORES ...	6,852,419	6,392,400	7,191,591	6,856,750
GUARANTEED INTEREST ON RAILWAY CAPITAL, LESS NET TRAFFIC RECEIPTS	1,540,435	1,202,900	1,677,030	1,527,700
TOTAL ... £	49,437,339	*46,521,260	50,259,171	49,288,190
PUBLIC WORKS EXTRAORDINARY—				
MILITARY	......	1,363,880	} Included under Public Works Ordinary.	
COMMUNICATIONS	......	431,210		
EMBANKMENTS	......	27,000		
IRRIGATION WORKS { In India	219,255	800,000	852,500	1,650,000
IRRIGATION WORKS { In England	......	......	14,000	1,055,000
SPECIAL FUND WORKS	382,613	470,000	420,000	500,000
STATE RAILWAYS ... { In India	594	......	213,300	103,800
STATE RAILWAYS ... { In England	......	......	330,973	257,000
TOTAL ... £	602,462	3,092,090	1,830,773	3,565,800
TOTAL EXPENDITURE £	50,039,801	49,613,350	52,089,944	52,853,990
SURPLUS, INCLUDING PUBLIC WORKS EXTRAORDINARY CHARGES £	......	......	......	......
GRAND TOTAL ... £	50,039,801	49,613,350	52,089,944	52,853,990
SURPLUS, EXCLUDING PUBLIC WORKS EXTRAORDINARY CHARGES £	......	2,065,640	....	52,650

* Total, including transfers from P. W. Extraordinary £48,343,350.

E. F. HARRISON,
Comptroller General of Accounts.

R. B. CHAPMAN,
Offg. Secretary to Govt. of India.

BUDGET ESTIMATE OF EXPENDITURE IN ENGLAND AND IN INDIA FOR 1869-70.

	Expenditure.		Total.
	In India.	In England (Net).	
	£	£	£
Interest on Debt	2,794,770	1,504,250	4,299,020
Civil Departments	18,934,530	1,570,442	20,504,972
Military...	12,850,000	3,202,061	16,052,061
Marine	473,390	409,837	883,227
Public Works—Ordinary ...	5,851,050	170,160	6,021,210
TOTAL ...	40,903,740	6,856,750	47,760,490
Guaranteed Interest on Railway Capital, less Net Traffic Receipts	......	1,527,700	1,527,700
	40,903,740	8,384,450	49,288,190
Public Works Extraordinary ...	2,253,800	1,312,000	3,565,800
GRAND TOTAL ...	43,157,540	9,696,450	52,853,990

EDWARD GAY,
Offg. Dy. Comptr. Genl. of Accts.

E. F. HARRISON,
Comptr. Genl. of Accts.

R. B. CHAPMAN,
Offg. Secy. to the Govt. of India.

FORT WILLIAM;
FINANCIAL DEPARTMENT,
The 6th March 1869.

Office Supdt. Govt. Printing.—No, L.C.—12-3-69—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 11th March, 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *presiding*.
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. Noble Taylor.
Major-General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C.S.I.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádúr, K.C.S.I., of Balrámpúr.
The Hon'ble G. S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

INCOME TAX BILL.

The Hon'ble SIR RICHARD TEMPLE said:—" I have now to move that the 'Bill for imposing duties on incomes and profits arising from offices, property, professions, and trades,' which has been before the Council since Saturday last, be referred to a Select Committee, with instructions to report upon it on the 20th instant, on which date it is my present intention to ask your Excellency to suspend the Standing Orders, so as to enable the Council to pass the Bill, as it may be amended, into law.

The general procedure and plan of the Bill is that of the License Tax Act of 1867, and the Certificate Tax of 1868 suitably modified to adapt it to a pure Income Tax.

The exemptions allowed by the Acts of 1867 and 1868 have been for the most part swept away, the only exception being the pay and allowances of Military men not in Civil employ whose pay and allowances do not exceed Rs. 500 per mensem, and property dedicated to religious and charitable public uses. These exemptions, which are based upon principles of general policy, and which have descended to us from the Income Tax Act of 1860, we have somewhat reluctantly resolved to continue.

A general power of exemption is also reserved to the Government of India as before; but it is not intended to exercise it, except in favour of tribes whom it may be desirable to exempt on political grounds, or of classes who already pay any special imperial tax of the nature of an Income Tax. Military, Non-Commissioned, and Warrant Officers in Civil employ, the Officers and men of the Police Force, Assistant Chaplains, and such persons will not be exempted from the tax imposed by the Bill.

The minimum limit of salaries liable to the Certificate Tax of last year was Rs. 1,000 per annum; under the Income Tax the minimum limit will be the same as that of other profits, *viz.*, Rs. 500 a year. The tax upon salaries, annuities, and pensions being precisely computable without any returns, will be levied as under the Acts of 1867 and 1868 at exactly one per cent. As a compensation for this precision, which may, no doubt, sometimes press with comparative severity, the existing procedure is preserved, by which the tax upon such incomes is recovered by monthly deductions. The scope of this part of the Bill has been enlarged so as to include annuities and pensions, and so as to take in the servants of municipal, charitable, and other public bodies and associations. Should it seem advisable to the Select Committee, the Government will not object to bring the servants of firms into the same category. There can be little doubt that it is a boon to the persons who fall under this Part to pay the tax by monthly deductions from their incomes. The Government can extend this boon to the servants of firms without material inconvenience, and are willing to do so if it be desired. It is not intended that persons should be exempt from the Income Tax whose incomes arise in British India, merely because their lives are spent chiefly or even entirely on boardship.

Upon Companies, as upon servants, the tax is to be levied at an exact percentage. The precise profits made in India by most of such Companies can be ascertained and returned without much trouble. In order to reduce this trouble to a minimum, it is proposed to assess the profits of Companies as ascertained by their latest completed accounts, instead of requiring the preparation of special accounts for the purposes of the Bill.

The principle upon which it is proposed to tax Shipping Companies is to reckon half the profits of a voyage between India and a foreign port as accruing in India. It is believed that there will be no difficulty in ascertaining such profits upon this principle.

Insurance Companies are, as the Bill stands exempted from this Part, truth to say, because owing to the effect upon all such Companies of the mutual principle and to the difficulty of ascertaining what share of any profits made by the Agencies of Foreign Companies can be credited to British India, a plan of satisfactorily taxing them has not yet been ascertained. Should it be found possible to do so, this feature in the Bill may be amended in the Select Committee; otherwise Insurance Companies, as such, will escape taxation; the shareholders, however, paying upon their profits under Part IV of the Bill. The profits of shareholders in Companies taxed under Part III will not be taxed under Part IV.

The schedule, in accordance with which it is proposed that the duties be levied under this Part, is intended to preserve the principle of rough assessment without returns, while avoiding the sacrifice of revenue involved in the very broad classification heretofore adopted.

Under Rs. 1,000, the Assessors, under the Act, will have to estimate incomes within a margin of Rs. 250. From Rs. 1,000 and under Rs. 2,000 the margin proposed is Rs. 500; from Rs. 2,000, but under Rs. 10,000, the margin is to be Rs. 1,000, from Rs. 10,000, but under Rs. 1,00,000, the margin is to be Rs. 2,500; and from Rs. 1,00,000 upwards the margin for estimate is to be Rs. 10,000.

The tax levied is to be one per cent. upon the minimum income estimated with an addition, to cover broken sums, of two-fifths of the difference between the minimum and the maximum. The exact mean is not taken, because it is presumed that more incomes will fall below the exact mean than above it.

Thus a person whose income is estimated to be between Rs. 500 and 750 will pay one per cent. upon Rs. 600.

A person whose income is estimated to be between Rs. 6,000 and 7,000 will pay upon Rs. 6,400.

A person whose income is estimated to be between Rs. 15,000 and 17,500 will pay upon Rs. 16,000.

A person whose income is estimated to be between Rs. 1,10,000 and 1,20,000 will pay upon Rs. 1,14,000; and so on.

Although no provision is made in the Bill for the formal return of any information to the Collector in the first instance, it is the confident expectation of the Government that persons liable to the duty will assist the Collector by disclosing such facts as he may require to know to enable him to make his assessment, thereby avoiding the annoyance of the over-assessment, which is likely perhaps to result if information be withheld.

It is proposed that the procedure under Part IV should differ slightly from that adopted under the Acts of 1867 and 1868, being at once simpler and, it is hoped, more convenient to the taxpayers.

The lists and certificates of these Acts are abandoned, and a notice will be served on each person showing the duty to which he is assessed. Should he object to the assessment, he will be allowed to petition the Collector without the preliminary payment of the amount heretofore required. It is only when a person wishes to appeal from the final decision of the Collector to the Commissioner, that payment of the amount assessed will be insisted upon as a condition precedent.

A provision has been introduced to enable the Collector to enhance the assessment made on any objector, in case it be discovered in the course of the enquiries following upon his objection, that the original assessment was too low. This will tend to prevent unfounded objections.

A person not paying either at once or after the disposal of any objection that he may make, will be liable to be summoned before a Magistrate without further notice, and the Magistrate will, as heretofore, have no option but to fine him in double the amount assessed upon him.

Provision has been made to enable a Collector to supplement an assessment deficient by reason of his being in ignorance of any particular source of income or profits. To this extent, the *onus* of informing the Collector correctly at the time when the assessment is first made is thrown upon the taxpayer.

Penalties are provided by which the proper officers of Companies, etc., can be forced to deliver the returns required. Power is given to the Commissioner of the Division to remit the penalty in part or entirely.

The year of assessment under the Acts of 1867 and 1868 commenced on the 1st May. This is found inconvenient; the Income Tax year will therefore coincide with the ordinary Financial year, and commence on the 1st April. Provision is

made in the Bill for the deduction from duty payable under it of any tax paid for April 1869 under Act IX of 1868.

It is not proposed to allow any discount to persons paying at once a sum which they might have paid, if they preferred it, as a second instalment. There is no sufficient advantage to the Exchequer from such pre-payments to compensate for the trouble that the accounting for discount gives.

The form of Schedule B. has been amended, so as to make it absolutely clear that though the last complete year's income of a taxpayer is to be an important *primâ facie* guide to the assessor, it is not to be an absolute standard. Either the assessor or the assessee may show cause why it should not be followed.

It is not intended to levy any duty upon the interest paid upon the Public Debt to persons not residing in British India, or upon annuities or allowances paid to persons so situate.

Such, my Lord, is the measure which I have to propose. In framing it I have made large use of the experience gained in working the valuable measures introduced in 1867 and 1868 by my Right Hon'ble friend Mr. Massey.

If the present Bill shall be found, as I have striven to make it, as little burdensome to the taxpayer as is consistent with the necessities of the Exchequer, this result will be largely owing to the antecedent labours of my Right Hon'ble friend and predecessor."

The Hon'ble Mr. Bullen said that, when the Bill for taxing trades and professions was under consideration last year, it was opposed by his friend Mr. Skinner who preceded him in the Council, on two grounds—first, on the ground that it was unnecessary, because from the statement of revenue submitted to the Council, it would, in all probability, be found that there was in reality no deficit but rather a small surplus, or at all events an equilibrium. Secondly, on the ground that it was unjust to select particular trades and professions for taxation, whilst other classes were allowed to go free, and especially unjust if those trades and professions were selected whose incomes were precarious, whilst those whose incomes were derived from fixed property were allowed to escape. That those objections were well founded was shown in the first place by the figures which Sir Richard Temple read on last Saturday, regarding the expenditure and income of the year 1868-69, as far as they could be ascertained. If Hon'ble Members would refer to the accounts at page 53 of the pamphlet, they would find that the regular expenditure for 1868-69 amounted to £50,259,171, but that included £1,822,090 for

public works, which were originally treated as extraordinary, but which had now been transferred to ordinary expenditure. That sum must consequently be deducted, because the Government had no intention at that time of treating the expenditure on barracks and public works of that kind as ordinary expenditure. If that was admitted, it would leave £48,437,081 as the expenditure of the last year. The receipts had been £49,288,700, from which must be deducted the amount received under the head of assessed taxes, which would not have been received if the Certificate Tax Bill had not been passed. Deduct £520,000, the amount realised under the Certificate Act, and £48,768,700 would be the result as the amount of actual receipts, which showed a surplus of £331,621. Therefore, as far as Mr. Skinner's first objection went, it was satisfactorily proved by the result that the objection was well founded.

As to the second objection, it was sufficiently vindicated by the fact that the Hon'ble Sir Richard Temple now came and asked for the repeal of the Certificate Act and the introduction of another which would tax all classes equally.

It was not MR. BULLEN's intention to repeat the opposition of last year. He was free to confess, after having given careful consideration to the arguments adduced with regard to the separation of ordinary and extraordinary expenditure, that he coincided in the principle laid down. Taking such public works as barracks which were principally alluded to, he agreed that they could in no sense be considered as of a reproductive kind, and were therefore properly chargeable to the revenue of the current year. Of course that must be taken with some reservation, because if the Government proposed to disburse the ten millions which the barracks were estimated to cost, in two instead of ten years, it would not be a fair charge on current revenue. But considering that it was to be spread over several years, he considered it was a charge which could fairly be placed in the current expenditure. If that was admitted, it followed that there must be taxation, unless the expenditure could be reduced here or in England. The Council had been told that economy here had been carried as far as possible consistently of course with the maintaining of the services in a proper state of efficiency. With regard to the expenditure in England, Sir Richard Temple had told the Council that the estimates received from the Secretary of State must be implicitly accepted. MR. BULLEN would revert later to that point. If therefore the expenditure could not be reduced, could the revenues be increased? Turning to the different heads of the budget, the only one in which he saw that an increase might possibly arise was opium. He thought it possible that the receipts on account of opium were a little under-estimated, because, although the provision for the year would be small

owing to short yield on account of the badness of the season, yet it was probable that the prices would rise in proportion to the reduced quantity, and the result would be that opium would show some increase on the amount estimated. If they looked to customs, there also there might possibly be some increase by the natural growth of trade ; but against that must be set that the fixed valuations on which the duties were levied was to be reduced. A recommendation to that effect had been made to the Government and he believed it was the intention of the Government to accede to it. There could not therefore be a great increase in the customs. Then the article of salt had been suggested as one from which an increased revenue might be derived. It was a favourite argument with the Native community that a small increase to the Salt Tax would not be felt, and that it was preferable to direct taxation. He knew that any proposition to increase the salt tax would find little favour in the Council, nor was he prepared to recommend that course. The increase could only be fair to the people if a reduction was made on other dutiable articles which entered largely into Native consumption.

If then an increase of revenue from indirect taxation was impossible, there was no resource but to resort to direct taxation, and in that case MR. BULLEN preferred an income tax on profits, to the certificate tax which it repealed. He thought the unpopularity of the late income tax amongst the Natives arose in a great measure from the inquisitorial nature of the returns which they were required to make, and also from the great oppression of which the collection of that tax was made the engine. Of course it would be clearly the duty of the Government to endeavour as far as it could to prevent such oppression. Only yesterday he had read in a Native paper, whose statements on other subjects were accepted as correct or at least as deserving of investigation, that recently great oppression had been proved in the collection of the certificate duty in the Húgli district. Persons had been assessed who were really not liable owing to their incomes being smaller than the minimum sum taxable, and also persons had been classed as partners and made to pay the certificate tax when they were not partners at all. In any proved cases of that kind it would be the duty of the Government to punish the parties who had gone beyond the provisions of the law.

It was not MR. BULLEN's intention to follow Sir Richard Temple into any discussion on the general clauses of the Bill ; that could better be done in Committee : but there was one remark he had intended to make and in which he had to some extent been answered by anticipation. The Bill did not make provision for the levy of the income tax on Government securities the interest of which was paid in England. There did not seem any good reason why a person residing

in England, the interest on whose securities was drawn by his agent in India, should pay the income tax, and another person residing in England getting paid his interest by drafts in India should be exempt. But that was a question which might properly be considered in Committee.

He would now revert to the question of Home charges. There was a peculiarity in the expression made use of in the budget statement in referring to this question. Sir Richard Temple said that the accounts rendered by the Secretary of State must be implicitly accepted. Mr. Bullen thought there was something in this expression of Sir Richard Temple's which implied that he would like to discuss this question if he were at liberty to do so. Mr. Bullen did not find himself under the same restraint. Formerly a statement of the Home charges used to be appended to the budget statement, and the Council had the opportunity of seeing what they consisted of: that for some reasons had not been done for the last two or three years. Whether because it was understood that this Council had no control over those charges, he did not know; but he thought it would be some satisfaction to know in what way the large sum of seven millions was expended in England. No one, he believed, doubted that every penny of the money was honestly disbursed for the service of India; but at any rate the least the Council could ask was that the taxpayers should have an account rendered to them of the way in which the money was expended. There was another question connected with this: it was the question of the Home balances. He found that those balances amounted generally to four or five millions. That appeared to be an unduly large sum, and it was not clear for what it was required. He had very often seen statements in the city article of the *Times* that the Secretary of State for India had lent half a million or a million on the Stock Exchange. No doubt the interest of that loan was credited to the Government of India; but lending money on the Stock Exchange at about one per cent., and borrowing at five per cent., was an operation in which one did not see the profits. At the very time that the Government here was under the necessity of borrowing large sums from the presidency banks at heavy rates of interest, which loans to some extent disturbed commercial operations, as far as they knew there was a large balance lying idle in the hands of the Secretary of State.

There was another matter on which he would ask for information,—it was with reference to the paper currency. Sir Richard Temple had made a satisfactory statement on that subject. He stated that the Government had now invested, as security against issue, four millions sterling. Mr. Bullen assumed that the interest on those four crores appeared somewhere in these accounts. It did not, however, appear under what head it would be found. The Hon'ble Member spoke

as if those four crores had been cancelled. Mr. Bullen apprehended that that was not exactly the way in which those securities were dealt with, for it might at some time become necessary for the Government to realise those securities, and if once cancelled it did not appear what authority the Government would have to re-issue them. He would suggest that it would be well if the paper currency account should appear under some head in the budget account; that the expenditure should appear on one side of the account, and the interest received in other departments on the other side.

The measure which the Government had taken to increase the weight of letters which might be carried by a single postage rate was a very great boon to the public. He might say the same of the uniform telegraph rate; he did not think the financial loss eventually would be important. He thought, on the contrary, that there would probably be an increase of revenue from these sources.

Then, with regard to the loans which Sir Richard Temple had stated that it would be necessary to raise. He need scarcely say that it was extremely important for the mercantile community to know when those loans would be raised, and in what form. He understood that half a million would be raised immediately on debentures, and another half a million in the course of the year. Two millions he understood were to be raised in England. There was a further two millions as to which the Council did not know where or when it would be raised. He trusted that as soon as Sir Richard Temple was in a position to do so, he would make known to the public the intentions of the Government, because it was of the greatest importance that a loan of two millions should not be hanging over the market. Mr. Bullen thought the whole loan could be raised more easily in England, and at a lower rate of interest than in India, and being raised on reproductive public works it would be readily taken up.

In conclusion he wished to assure the Government that, as far as the European non-official community was concerned, he believed there was no indisposition to submit to such taxation as was necessary for the good government of the country. Strict watchfulness over expenditure they did expect, but undue economy might prove in the end to be very wasteful. With the increased cost of living in this country, and the constant demand for improved civil administration which the progress of education brought in its train, no one could expect that the cost of the civil government of the country would diminish; rather they must expect year by year to find it increase. Nor could the military expenditure remain stationary so long as the European force was maintained at its present strength; and he for one was not in favour of that force being reduced. No one begrudged to the European soldier the extra pay, nor to his wife the extra subsistence allowance;

nor to the sepoy his good conduct pay. These additional charges were not to be met by a little paring here and a little retrenchment there, ending as it probably would in reducing establishments below the point of efficiency, from which inevitably there would be a costly reaction. Rather it should be the aim of Government by fostering industry and commerce, and by improving communications, to increase those sources of revenue which were elastic, so as to meet the increased expenditure. The happiness of the people would thus be promoted and the administration of India, already so creditable to England in the eyes of all impartial observers, would become still more honourable to the nation to whose government, by the Providence of God, these millions had been entrusted.

The Hon'ble Mr. Shaw Stewart said that he had very few remarks to make on this Bill. He trusted the Hon'ble Sir Richard Temple would accept his sincere congratulations on the success with which he had vindicated and re-established the policy of the Income Tax of 1860. He had always thought that it was an unfortunate day for India when those counsels prevailed which resulted in the reversal of that policy, and in the abrogation of the entire tax, including both the three per cent. tax, to the repeal of which Government was pledged, and the one per cent. tax, regarding which there had been no such pledge given, and which it was originally intended to retain permanently. It was also satisfactory to observe that the Hon'ble gentleman expected to realize upwards of £900,000 by this tax. When it was remembered that the four per cent. income tax of 1860, in the only year it was efficiently worked, yielded but two millions, it was most satisfactory to think that there was every prospect of obtaining now a result proportionately double.

Reserving his remarks on minor details, he (Mr. Shaw Stewart) would refer to two points in the Bill before them. The Hon'ble Mover stated his expectation that the public would afford information as to the extent of their private incomes, and that the Collectors would thus be able to assess the tax without calling for returns: he feared very much that this was expecting too much from the public and from the Collectors, and he did not see how to attain any degree of exactness in the assessments, unless the Collectors were authorized to call for returns of income.

The other point in the Bill to which he desired to refer was the rate of assessment; he doubted very much if that would be sufficient. With the proposed rate, the Hon'ble gentleman expected a sum of £900,000, and so to obtain a slight surplus, or at all events an equilibrium; but there was one branch of the estimated revenue which he thought was taken for too much: he referred to Stamps. The Hon'ble gentleman in his budget speech remarked as follows:

"As the Council knows, there is a revision going on of the schedules of the stamp-duties; but no provision has been made for the fiscal effect of any changes, as they have not yet been finally determined."

But on turning to the tabular statements, MR. SHAW STEWART found that an increase was expected from £2,340,000 in the current year, to £2,397,000 in the year about to commence, or upwards of £57,000. Remembering that these duties rose at a jump in 1867 by upwards of £700,000, he thought that there was room to fear that no allowance had been made for revision on the side of decrease, but that it was intended to strain these duties to the utmost. Ever since this law was proposed, he had steadily opposed the enormous increase of stamp-duty on civil plaints, and the institution-fee on criminal proceedings. The former had involved an increase in the stamp-duty on civil suits, which varied, he believed, from four-fold to forty-fold; by the latter it had been for the first time enacted as law throughout India, and in opposition to the opinion of the Governments of Madras and Bombay, that no one of the population of this country could bring a criminal charge without paying a fee equal to a week's earnings of an ordinary labourer. By steady perseverance in his opposition, he elicited at last from His Excellency's predecessor, Sir John Lawrence, an acknowledgment that more had been done than ought to have been done: that in some respects the new stamp-duties were excessive and unreasonable, and that the law did press severely on the poorer classes, and His Excellency admitted the reasonableness of his (MR. SHAW STEWART'S) wish to have the question reconsidered. The question of revision was, he knew, in the hands of a member of this Council of whose ability and judgment he had the highest opinion, and he was confident that in his hands no delay would occur in dealing with a mode of taxation which had been condemned by the Local Governments. If these stamp-duties were revised so as to afford the relief that was expected, there would be a considerable falling off in the revenue from this source, which could only be met by an increase in the rate of the income tax.

With the general policy enunciated in his Hon'ble friend's budget speech he almost entirely concurred; there was only one point which caused him regret. It would be remembered that two years ago the Right Hon'ble Mr. Massey referred to a scheme for giving greater financial independence to the Local Governments of Bombay and Madras. He described forcibly the unsatisfactory nature of the control exercised by the central Government over local charges, and expressed a hope that he would be able to bring that arrangement to maturity before the close of the year 1867-68. Last year MR. SHAW STEWART reminded the Right Hon'ble gentleman of the statement, and he said that the plan was still under the consideration of Government. This year his Hon'ble friend

could only repeat that the subject was still under consideration. MR. SHAW STEWART ventured to express a hope that, when the subject had received mature consideration, something would be done. He had had a little to do with the administration of one of these Local Governments, and he could confidently assert that if they were placed in a position of greater financial independence and responsibility, they would be endued with far greater life and usefulness.

The Hon'ble MAHARAJA SIR DIG-BIJAY SINGH, speaking in Hindûstáni, said that his Hon'ble colleague Sir Richard Temple had, in his report on the budget for the coming year, so ably and distinctly proved a deficit of £350,000 in the proposed charges against the receipts of the coming year, that the necessity of imposing a fresh tax appeared unavoidable.

He would, under such circumstances, propose that permission be granted (under certain conditions) to re-open the Salt works in the North-Western Provinces and Oudh, in the places where salt was formerly manufactured, and had only lately been stopped by Government, as he believed this would in some measure add to the receipts of the coming year, and at the same time fill the hearts of the majority of poor people with gratitude by placing this most indispensable article within their reach at a much reduced price. He would also advocate a closer supervision of the Public Works' expenditure, as he was certain that, by so doing, a very large saving might be effected without in any way impairing the efficiency of the Department or the number or quality of the works undertaken by it. Besides the above, if even the most imperceptible reductions were to be made in the miscellaneous and other expenses, each item, though most insignificant in itself separately, would, when added together, amount to something near the present deficit.

The Hon'ble MR. COWIE said that he believed he was right in assuming that the financial statement of the Hon'ble Sir Richard Temple had the full sanction of the Executive Government as well as that of the Secretary of State. In making any remarks upon it he could hardly hope to effect any immediate change in their views. He could only ventilate his own opinion as an independent Member of this Council. He conceived that the Hon'ble Member, in spite of his expressed anxiety to slay the giant, deficit, had had to create that giant first and to despatch him afterwards. He had done this by placing the heavy amount of a million and a half for the partial cost of new barracks among items of ordinary expenditure to be met out of current revenue.

Now he (MR. COWIE) could not subscribe to the reasons for this which were insisted upon in the budget speech, except perhaps to the last one, that it was the order of the Secretary of State.

But then that ought to have been placed first, for it over-rode all the others. This new barrack accommodation, which would do so much for the soldier and eventually for the country and the revenue, ought, if faithfully constructed, to be good for the next half century, and why the cost was to come out of the current revenue of two or three years, or in other words, out of the pockets of the tax-payers of that limited period, he confessed he could not comprehend. He might here, with with reference to what fell from his Hon'ble friend Mr. Bullen, record his opinion that barracks of the nature proposed would prove in one sense reproductive works. His Excellency the Commander-in-Chief could inform us how many hundreds of British soldiers were annually brought out to this country and at what heavy cost to its revenues. Improve the condition, moral, social and sanitary, of those soldiers, and you would in the course of years find a material reduction in the numbers required and in their consequent cost to the State. He (Mr. Cowie) was very far from desiring to saddle posterity with this outlay. But he maintained it was only fair and reasonable that it should be extended over a moderate series of years. For instance, if ten millions were required for such an object, issue debentures payable annually within fifteen years. The budget provision for these annual instalments, with their interest, would surely be a more legitimate task for the Finance Minister of the year than the setting down, as on the present occasion, an arbitrary sum productive of a deficit, which again had to be made up by the imposition of new taxes.

If the Hon'ble Member, in his present estimate for 1869-70, would transfer one million of the cost of barracks to extraordinary charges, and provide for it by the issue of debentures at two and three years, he would find himself in possession of an estimated surplus which would enable him to reduce or remove the objectionable export duty on grain, and such portions of the $7\frac{1}{2}$ per cent. duties as had lately been shewn to press heavily on commerce. The Hon'ble Member, in explaining why the taxpayer of the present day should be subject to this proposed heavy outlay, warned us that other demands of a like nature would constantly be cropping up; but surely this prophecy might fairly be taken in connexion with the extraordinary elasticity of revenue which was at the same time commented upon, and which would no doubt be progressive. He might now say that he cordially approved of the supersession of the license tax by the new income tax, and would even have welcomed a somewhat higher percentage, if it had been made contemporaneous with the desired remission in customs' duties. In regard to the details of the Bill he would only say that he hoped the Hon'ble Member would place Mr. Bullen and himself on the Select Committee, where they could give their consideration to it. In conclusion he wished to ask the Hon'ble Sir Richard Temple whether, in the

present greatly improved state of intercourse by rail, wire and steam it was requisite to hold such large cash balances as twelve millions. Where such facilities of communication existed, that sum would appear to bear a very large proportion to an annual expenditure of fifty-two millions. His Hon'ble friend, Mr. Bullen, had made a similar enquiry in regard to balances in London, so he (Mr. Cowie) confined hismself to those of India. Possibly the occasional use of the Exchequer Bill system might obviate the necessity of keeping such heavy unemployed balances.

The Hon'ble Mr. Cockerell said that as the policy of the Bill which was now before the Council was one in which he entirely concurred, inasmuch as it aimed at the removal of those defects of the certificate tax which he, in common with a late Member of this Council, the Hon'ble Mr. Skinner, had so especially deprecated, in the debate which preceded the adoption of that measure last year ; as, moreover, this proposed taxation had on the present occasion elicited no opposition whatever, and consequently needed no defence, it would have been unnecessary for him (Mr. Cockerell) to take up the time of the Council with any remarks in this debate, but for the fact of the Hon'ble Mr. Shaw Stewart having, with his customary pertinacity, availed himself of the opportunity afforded him by this debate of ventilating his opinion as to the impolicy of the increased stamp-duty on judicial proceedings and especially the one rupee stamp on criminal petitions, which resulted from the enactment of Act XXVI of 1867. As the investigation of the results of that legislation which Mr. Shaw Stewart condemned, had been specially entrusted to him (Mr. Cockerell), it seemed right he should not allow his Hon'ble friend's remarks on this subject to pass without stating the facts of the case. He (Mr. Cockerell) could assure the Council that the Government of India had been in no way unmindful of the pledge which it gave that the operation of the Act would be carefully watched, and if the proved effects of its operation should be found to be as prejudicial to the due administration of justice as the Hon'ble Member (Mr. Shaw Stewart) assumed, that some substantial relief would be afforded.

In pursuance of this undertaking the Government of India had, at the close of the first year's operation of the new Act, directed the submission of certain statistical returns and reports which were calculated to afford a fair test of its actual effect on general litigation. These returns and reports had now been received from almost all parts of the Empire, and he (Mr. Cockerell) had been employed for some time in collating the facts established by them regarding the working of the new and enhanced rates of stamp-fees levied on judicial proceedings.

The Hon'ble Mr. Shaw Stewart, from what source of information he (MR. COCKERELL) could not conceive, had stated to the Council that the reports of all local officers went to show that the effect of the stamp-fee levied on criminal petitions was universally condemned. As all the reports on the working of the Act had been referred to him (MR. COCKERELL) for examination and analysis, the Council would probably deem him better qualified to speak authoritatively on such a subject than his Hon'ble friend.

The Governments of Madras and Bombay had expressed their condemnation of the policy of imposing any stamp-fee on criminal proceedings, but this opinion was certainly not universally, even if it could be said to be generally, shared by the local officers subordinate to those Governments; nor could it be said to be strongly supported by the statistical returns of the working of the Act on this branch of judicial proceedings which had been submitted by those officers. On the whole, opinion might be said to be very much divided on this point, and the statistical returns were far from conclusive as to the impolicy of levying stamp-fees on criminal petitions.

So also as regarded the increased rates in civil and revenue suits, the information as yet obtained was insufficient to lead to any sound conclusion as to the real effects of those rates. There had no doubt been a very considerable reduction, amounting to something like twenty per cent. of the litigation of the previous year, during the first year's operation of Act XXVI of 1867; but those officers whose expressed opinions evinced the most thought on this subject, hesitated to accept this reduction as a fair and certain test of the oppressive character of the stamp-fees imposed by that enactment.

It was urged, and the argument commended itself to the reason that in the first year's operation of so greatly enhanced rates, a considerable reduction in the number of suits instituted was to be expected as the necessary result of the declaration of the policy of the Government, made at the time of the enactment of this measure, to the effect it was to be considered as tentative, liable to be modified to such extent as the experience gained of its operation might suggest.

In such case, where the institution of suits could be delayed, they would certainly be kept back in the expectation of some modification of the rates of institution-fee; hence deductions from the returns of the first year's operation of the new law were inconclusive.

The working of the Act was therefore still under observation and consideration, and the Government would, he felt sure, take action in the matter, if necessary,

when there was sufficient information before it to enable it to judge by practical results whether the rates of fees levied on the institution of civil suits had been too greatly enhanced, and whether it was expedient that the imposition of a one rupee stamp on criminal petitions should or should not be retained.

HIS HONOUR THE LIEUTENANT-GOVERNOR said the Hon'ble Mr. Shaw Stewart had anticipated him in the only remarks which he had intended to make when he doubted its being possible to work the Bill before the Council without having returns of income. HIS HONOUR shared that doubt very strongly; indeed he had read section 16 two or three times before he could believe that the Collector was himself to ascertain, without any assistance at all, the incomes of persons, from whatever sources derived, resident within his own jurisdiction.

The principle of that clause might possibly work in a tolerably fair way when it applied only to professions and occupations; but when we came to apply that principle to every kind of income, it seemed to HIS HONOUR simply impossible that the Collector could do anything but make the very widest guess at any man's income. HIS HONOUR having now heard what the Hon'ble Sir Richard Temple had said, that his expectation was that the taxpayers would themselves be good enough to inform the Collector in every case what their incomes were, HIS HONOUR entirely agreed with Mr. Shaw Stewart in thinking that the Hon'ble Member was expecting too much, and HIS HONOUR could not but fear that the attempt would throw something like ridicule on the measure. HIS HONOUR therefore expressed the strongest hope that the Select Committee would not, without very careful consideration, keep the Bill in its present shape.

If the Hon'ble Mr. Shaw Stewart had anticipated HIS HONOUR on one point, he made a remark which led HIS HONOUR to make an observation on another point. HIS HONOUR congratulated Sir Richard Temple in having restored or reverted to the policy of the Right Hon'ble Mr. Wilson in 1860, and HIS HONOUR must say that whatever the merits of the present policy might be, there was no sort of analogy whatever between that and the policy of 1860. His HONOUR did not propose to detain the Council by attempting to prove that statement; he would only refer any one who doubted it to the speech made by Mr. Wilson in 1860, and his statement of the circumstances under which the income tax was proposed. Those circumstances, and the circumstances under which a general income tax was now proposed, were as different as it was possible to conceive.

His Excellency the Commander-in-Chief said he had intended to have given a silent vote on this occasion in support of the proposals of his Hon'ble colleague Sir Richard Temple. Indeed, His Excellency had revolved very carefully in his mind the propriety of the course which he was now about to take; he would assure the Council that he proposed to make no opposition to the measure before it, but on the contrary, as a Member of His Lordship's Government, and as one who had been admitted to all the previous discussions and deliberations on the measures before the Council, His Excellency was not only prepared to vote in favour of the measure, but also to say something in favour of it. But there were points in Sir Richard Temple's statement which His Excellency confessed gave him, as a Member of Sir John Lawrence's Government, and as a very intimate friend and hearty colleague of the Right Hon'ble Mr. Massey, considerable pain. If we looked at the pamphlet which contained Sir Richard Temple's budget statement, in page 22 we found that his Hon'ble friend had adopted the method of bringing on the carpet the financial liabilities of the preceding years. We were there told of the deficits of the previous three years; we were told of the loans which were made in order to meet those deficits; and we were finally afforded the reasons, according to Sir Richard Temple's apprehension, of the loans. In regard to the deficits and in regard to the loans there was no question; but His Excellency desired immediately to join issue with Sir Richard Temple on the reasons which led to the loans. It was said that on account of certain Civil Public Works of a remunerative character, three millions of money had been obtained by loans, and Sir Richard Temple then proceeded to say that three and a half millions had also been provided by loan to meet the charge on account of Barracks. Now His Excellency must trouble the Council with a short detail of what took place some time back. A few months ago, within closed doors, this Council, under the presidency of His Excellency's predecessor, had a very long and active discussion on the matter, which had received its solution by the decision of the Governor General in Council with regard to the measures introduced by Sir Richard Temple. One of the points which was then discussed was the amount of borrowed money which had been spent on these very Barracks, and on which it was now declared that $3\frac{1}{2}$ millions had been expended, the said $3\frac{1}{2}$ millions having been raised by loan. It was established in that discussion that only £364,000 had been so raised on that account; that is to say, that the large gross charge of nearly four and a half millions had been defrayed out of the ordinary revenue excepting the sum of £364,000. That point was established by His Excellency. In Sir Richard Temple's reply to His Excellency's Minute comprising numerous points of controversy which had arisen between His Excellency and Sir Richard Temple, that point was not controverted. Therefore His Excellency had a right to say by assumption—

he would rather say that his assertion, based on the figures furnished by authoritative departments, that only £364,000 of borrowed money had been expended on account of the Barracks, was correct; for it was not controverted by Sir Richard Temple in the course of that discussion. HIS EXCELLENCY was therefore at a loss to understand what was the meaning of the statement which he found in the pamphlet, that $3\frac{1}{2}$ millions of borrowed money had been expended on account of those Barracks. Now that statement did really cast a great imputation on the reputation of the Right Hon'ble Mr. Massey, and it also cast a great imputation on the Government of which Mr. Massey was a member. HIS EXCELLENCY would proceed to show how that arose. The Right Hon'ble Mr. Massey was at great pains, in the statements which he delivered in 1867 and 1868, to explain how it was that deficits had occurred, and that it might be necessary for the Governor General in Council to have recourse to the market instead of depending on the ordinary revenues of the country. HIS EXCELLENCY found in the first place, in the statement of 1867, that it was originally intended to build steamers for the transport service, involving an expenditure of about one million, out of borrowed money. It appeared that in England there must have been much controversy on this point, and finally it was determined not to borrow on this account, but to take the money out of the cash balances. Consequently, we had the Right Hon'ble Mr. Massey declaring that this money was provided from the cash balances, and instead of having to meet a very small charge for interest and the eventual re-payment of the loan, he had to encounter an immediate charge of half a million on that account: that disposed of $1\frac{1}{2}$ millions out of the $3\frac{1}{2}$. If we went on to the next budget statement, we found the following; this it would be recollected was delivered this time last year (1868). The Right Hon'ble gentleman was describing the actual results of the year 1866-67. He said :—

"Our estimated expenditure was £44,307,000; our actual was £44,530,000. Our estimated deficit was £2,400,000; our actual deficit turned out to be £2,517,000. The difference between our estimated deficit and the actual result was, in round numbers, £120,000. I stated to the Council last year that the very large deficit which I had to meet was not attributable to any falling off in the revenue, but mainly to accidental causes. It was, in the first place, owing to an over estimate of opium, but not a very considerable over-estimate. The deficit under this head was still further increased by the accident that we had calculated upon bringing to the market in Calcutta a greater number of chests than we were by our engagements enabled to do. In fact we were obliged to keep back 5,320 chests of opium, which would have realized £691,600. The deficit was also swollen by other special and temporary causes. We were disappointed in our expectation of repayment of £460,000, advanced to Bombay against the proceeds of the Land Sales. There were losses of nearly £300,000, under Customs and Salt, owing to the depression of trade; and the Home charges were increased by £480,000 on account of the new transport ships and stores for India."

Thus it appeared that, instead of debiting this deficit to the charge on account of Barracks, Mr. Massey debited it to every other conceivable item of expenditure. The importance of this would be shown in His Excellency's further remarks. But it must also be observed that, whilst Sir Richard Temple threw all the burthen of the loans on the Barracks, he omitted to consider another cause of this deficit which led to those loans. His Excellency should rather say of this nominal deficit; because, under the instructions of the Secretary of State, we were desired to take under the head of Ordinary Expenditure, not only these Barracks, but also vast civil works which on the average exceeded £400,000 per annum in their cost. Therefore, in addition to the particular cause to which His Excellency had just referred, we had also to add the cost of such civil works, but which were not included in the present statement. His Excellency thought that he had now shown that Sir Richard Temple, when he committed himself to that statement, committed himself to an oversight, and it was important that the oversight should be freely explained, as His Excellency would venture to do, because the reputation of the Right Hon'ble Mr. Massey was seriously concerned, seeing that Sir Richard Temple ascribed the causes of the loans to wholly other causes than those accepted by us under the Government of His Lordship's predecessor.

It was necessary perhaps that His Excellency should elucidate this point still further. In 1865-66 this Barrack reform first came to be carried into practical effect after a vast deal of deliberation. The Right Hon'ble Mr. Massey, in his statement in 1866, was unwilling to load the estimates with a loan on that account, and he was supported in his caution by the members of Sir John Lawrence's Government; but in the next year, not only Mr. Massey, but, His Excellency believed, every member of the Administration of that year, was strongly impressed by the notion that the ordinary revenues of the country were greatly too much devoted to this item of extraordinary military expenditure, and that in consequence civil designs and works of great importance to the community at large would be indefinitely postponed. Therefore it was that the resolution was adopted in 1866, to follow that course which had been already shadowed out by Lord Halifax as Secretary of State in 1865, when he told us "Build your Barracks as well as you can out of your income, but having done so, you may borrow the remainder for it." What was the course of the Right Hon'ble Mr. Massey? He did not commit himself, as was done in England in the analogous case of the fortifications, to an immense loan; he did not commit himself to a declaration that the whole of the works were to be constructed out of borrowed money; he did not hastily contract loans, but he declared that he would adopt the plan of Lord Halifax, and having

built the Barracks as far as he could out of the ordinary revenues of the year, would borrow the difference to give him the means for their completion. That was the policy agreed to in Sir John Lawrence's Council in 1866, he believed without a single dissentient voice. There were present to-day those who could correct His Excellency if he was wrong, but he believed Mr. Massey was supported in that proposition by the unanimous voice of the Council of that day. Lord Halifax was succeeded by Lord Cranbourne, who fully adopted the principle which was carried out by the Government of India, and he gave his sanction to the proposition of Mr. Massey. Accordingly we saw that in 1867 the Right Hon'ble Mr. Massey, or rather the Secretary of State on his account, borrowed a million of money on account of these Barracks: but such was the elasticity of the revenue in 1867; such was the difference between the actual returns as compared with the budget estimate, that Mr. Massey told us this time last year that out of the borrowed million he had only spent £200,000; the remainder was in our cash balances, and could be spent on remunerative works, or would go to increase our income for the next year. We therefore arrived at this conclusion, that not only were the loans not to be attributed, as Sir Richard Temple had solely attributed them, to the sums expended in the building of these Barracks, but also to this conclusion that the Right Hon'ble Mr. Massey took the greatest possible precautions to limit loan obligations on this account. That was a very important fact. His Excellency invited the attention of the Council to the epithet used in the 41st page of the pamphlet, in which the policy pursued by the Government of India for three years—a policy which had received the sanction of three successive Secretaries of State, a policy which was finally reversed without argument, a policy which the Government never asked to be reversed—was stigmatized as intolerable; if we turned to the 41st page we saw that that policy had been thus stigmatized. His Excellency thought that, notwithstanding the compliment paid to the Right Hon'ble Mr. Massey by his Hon'ble friend, notwithstanding that a change of view had actuated the policy of the present day, to use such a term with reference to a policy which had been very deliberately adopted and approved was not respectful to the Government of that time, and certainly not of a character which would be grateful to Sir Richard Temple's predecessor.

His Excellency had already said that it was not only his wish give a vote in support of the measure before the Council, but that he thought there was something to be said in favour of the policy now pursued. It was no secret in this Council that His Excellency had been a humble follower of the doctrines of the Right Hon'ble Mr. Massey and his predecessor Sir Charles Trevelyan with regard to direct taxation, but as times and circumstances changed, so it might be necessary with

regard to expediency to alter our views. It had been determined to spread the building of these Barracks over a period which HIS EXCELLENCY thought would be nearer ten, or perhaps ten or twelve years, than the term of five years originally determined on. That was not a mere matter of finance, but was also a matter of engineering necessity and construction, and on a final review of all the circumstances of the case by the present Secretary of State, it had been determined that, at all events during the current year, such a sum only should be set aside for extraordinary expenditure on account of these Barracks as, if the example were followed in future, would defer the final completion of those Barracks to (say) six or seven years from this date, instead of the original five years, besides the four or five years already expired. That being the case, the great argument against including this expenditure in ordinary revenue had to a certain extent been cut away; that is to say, with the finances in a healthy condition the annual expenditure for Barracks had been so restricted that Sir Richard Temple could fairly declare that "as I have met you half way, you must consider this and allow me to take the remainder from revenue." But there was another point. It was clearly laid down in the despatch to the Secretary of State six or seven months ago, to which he had already referred, that if it were necessary to have recourse to an extension of the certificate tax, it might be augmented on the largest possible considerations, *viz.*, that we were about to commence a regular system of reproductive public works by becoming a great borrowing Government (that was Mr. Massey's expression), and that consequently it was necessary to fortify the credit of the country by taking measures that no works were borrowed for which might not fairly be expected to give returns. That brought HIS EXCELLENCY to the Hon'ble Mr. Cowie's view and much might be said in its favour. It was quite true that the better you made the Barracks, the more you looked after your men, the fewer the casualties would be, and undoubtedly the army charges would be lessened. But HIS EXCELLENCY was sure that any change of that sort must be one of the most gradual kind, and it was hardly one which a financier could take into calculation. There was another point, one of engineering and construction, which to a certain extent did strengthen Mr. Cowie's argument, that so long as troops were living in temporary Barracks constructed only to last a small number of years, it did happen that a large amount was expended in the repairs of those barracks. HIS EXCELLENCY found, from the returns of Mr. Wilson, that in 1856-57 the ordinary charge for public works did not exceed £350,000. Now, however, we discovered that the ordinary charge for ordinary military public works, as distinguished from those great works of construction, amounted to about £700,000 a year. That was an alarming fact, because those ordinary works did not go to increase your fixed capital in the shape of great permanent buildings, but they were mainly directed to keep in

a fairly habitable state the buildings in which your troops were temporarily lodged. Therefore a very large proportion of that charge, which was principally devoted to repairs, would subside altogether, and although that would not be sufficient to cover the interest of such immense sums as wou'd be required for the completion of the Barrack reform, it would act as a considerable set-off. His Excellency thought that, in order to make out a good case for the policy pursued by the Government (the point was noticed by His Honour the Lieutenant-Governor), a sufficient distinction was not drawn by Sir Richard Temple between the state of things at the present day, and that to which Mr. Wilson alluded, and to which Mr. Laing in his subsequent statements drew marked attention for two years. If we looked at the deficits to which Mr. Wilson and Mr. Laing repeatedly invited notice, we found that they were deficits caused by the effects of the war that had just come to an end. Such was the period at which the experiment of the income tax was launched by Mr. Wilson and Mr. Laing, the latter of whom fully acknowledged the exertions of Major General Balfour and his Commission in reducing the military expenditure. Sir Charles Trevelyan also called marked attention to the fact of the vast expenditure still going on, and which was not finally put an end to till he had left the country. Well, what were the facts of the deficit now? Was it right to call it a deficit at all? or was it not rather right to say that, whatever deficit there was, was a supposed one, or rather that it was the result of an expenditure on ultimately remunerative account which was already to a great extent met by positive surplus. What then did the deficit in general consist of? It consisted in the first place of remunerative works. Sir Richard Temple had told us that these remunerative works amounted to three millions during three years. His Excellency had also shown that there were other works which, though not remunerative, were paid out of revenue and not out of loan. But in addition we had seen that half a million had been lent to the Calcutta Municipality at a reasonable rate of interest, and the terms and conditions of which were such as to extinguish the debt in a certain number of years.

There was another point to be considered. This extraordinary expenditure on account of the Barracks it had been determined as a matter of principle should be included under the head of Ordinary Expenditure, so that it might be defrayed out of the yearly revenue. But whilst that had been done, the Government of India did not depart from the proposition on which their original policy was founded, and they were careful in the despatch to the Secretary of State, which went some months ago, to show that although it was right, according to their view and the Secretary of State's bidding, to include this expenditure under the

head of Ordinary, still they saved their position by saying that the works themselves were extraordinary, that whilst the works still preserved that character of Extra ordinary, they were built out of ordinary revenue. It was impossible to put any other construction on the words of the Government of India or the directions given successively by three Secretaries of State.

But there was another point yet. It would be found by the Returns appended to Mr. Laing's statement that he took a reasonable view of the guaranteed interest on Railways. He was careful to distinguish between deficits which did include that guarantee, and deficits which did not include that charge. He distinctly stated (and it was a proposition which had not been controverted) that properly such guaranteed interest was a charge on capital. We knew that, on nearly all the great Railways in Europe and the United States when large capitals were embarked by private Companies for the construction of Railways or other remunerative works, it was the ordinary custom to raise a sufficiency of capital for the whole, so that the interest on capital should be paid from capital till the work became remunerative, that was to say until it was in operation. The Government of India being anxious to obtain the great sums wanted when the schemes of Lord Dalhousie were first submitted to the English market, adopted a policy which did not commend itself to private capitalists, and undertook to pay the guaranteed interest. What was the inference? It was that, far from being deficit proper, this large sum, accruing from year to year on account of guaranteed interest paid to Railway Companies, was in truth a sinking fund for the benefit of posterity. According to the plan of Lord Dalhousie, and feathered by every successive Financier, it was, in fact, a sinking fund for the use of those coming after us.

His Excellency did not wish to lay too much stress on this point, or to make any prediction as to when the returns of the Railways would be such as to commence the realization of the policy referred to, but it was certainly right to bear carefully in mind how the gross total of our expenditure came to be made up, especially with regard to the considerations to which he had now ventured to invite attention.

His Excellency did not wish to detain the Council any longer. He thought it right that a proper distinction should be drawn, and when we embarked on a great policy, His Excellency thought we ought to take measures befitting that policy; but at the same time we should draw proper distinctions, and not allow ourselves to run away with the idea that there was a deficit such as that dealt with by Mr. Wilson, when in point of fact we had to deal with a time of financial prosperity

which had never been equalled in India, and not even in any country in Europe, and at the present time was superior to that of our own country, England herself.

The Hon'ble MR. TAYLOR said that, before the debate went further, he wished to correct a statement of figures made by His Excellency the Commander-in-Chief, which, if unexplained, might lead to misapprehension. His Excellency said that the Hon'ble Mr. Cowie's remark as to the Barrack construction being in a sense remunerative was so far true that, since 1857-58, there had been a great increase in the charge for maintenance or repairs, and that in the former period the charge had not exceeded £300,000, whereas now the ordinary charge was £700,000. The figures quoted by His Excellency referred to repairs only. Now, what he (MR. TAYLOR) wished to explain was simply, that what was called *ordinary* included all new works not being parts of the great scheme for new Barracks. In the present budget the sum for repairs was about £300,000, which was just about the sum quoted by His Excellency as that in 1857-58. The rest of the £700,000 was for minor new works.

The Hon'ble Major-General SIR H. M. DURAND said that, after the communication of the decision of the Secretary of State, he felt precluded from entering into any discussion on the merits of the reversal of the financial policy which previous Secretaries of State had allowed in case of necessity, with respect to the extraordinary expenditure on Barrack accommodation for our European soldiers. Accepting the decision of the Secretary of State as settling the question, he would avoid any analysis of this matter on its merits. Viewed in connection with the measures of the Right Hon'ble Mr. Massey, our late Member for Finance, the observations of His Excellency the Commander-in-Chief on the present budget statement and in defence of Mr. Massey's policy, rendered it unnecessary on his part to review what had passed with reference to this more restricted ground. He would therefore confine his remarks to subsidiary considerations, and would not take up the time of the Council with any observations on either of the foregoing subjects.

That which he would first touch upon was that, although his Hon'ble colleague, Sir R. Temple, had himself avowed (p. 24) that Barracks ought not to selected as the cause of deficit, yet that the whole tenor of the budget statement was calculated, by the prominence given to this one item of expenditure, to mark it out as the main cause of the deficit, and to throw on the military expenditure the whole onus of the existing deficit. He (SIR H. M. DURAND) hardly thought this quite correct or fair to the Military Department.

He would therefore call the attention of the Council to the fact that, beginning from the time that Mr. Wilson was the Financial Member of this Council, that was from 1859-60, to the nearest period for which results could be obtained correctly, 1867-68, there had been a total Civil Public Works expenditure of upwards of thirty-seven millions (£37,000,000), whereas the total Military Public Works expenditure only amounted to an aggregate of upwards of eight millions (£8,000,000). He would not take up the time of the Council with going over the details year by year, during the above period, which showed an aggregate on the part of the Civil Works alone of eighteen millions nine hundred thousand ((£18,902,319) for construction, and eighteen millions one hundred and eight thousand (£18,108,779) for repairs, salaries, etc., against a sum of upwards of six millions (£6,006,314) for construction of Military Public Works, and upwards of two millions (£2,142,813) for repairs, salaries, etc. Without entering into the series of annual details in comparison of the two sources of Public Works expenditure—details which the Council might be sure corresponded with the aggregate—he called its attention to these figures in support of what he had stated, that it was hardly fair, where the disparity was so great between Civil and Military Public Works expenditure, to saddle the latter wholly, or at any rate in a very prominent way, with the creation of the deficit.

From the review of our financial position there was, he was afraid, no doubt that our expenditure had, year by year, exceeded not only our revenue but the accommodations by loan, etc., with which the Government had supplemented receipts in order to cover expenditure. This excess could not, in his opinion, be fairly charged to the Military Department alone; it must be distributed among all Departments; and the accumulated deficit should not be saddled on the construction of new Barracks for our European troops which had lately commenced.

His Hon'ble colleague, Mr. Cowie, had adverted to the designation of reproductive and unproductive Public Works in reference to the new Barrack expenditure. Without any very nice dissection of this question, he thought the term reproductive works was rather a vague one, and that we were gliding into a somewhat loose use of it, the tendency being to accept the attribute of "reproductive" as in itself a sanction for any enterprise to be provided for by loan. At a time when we were about to embark on an expenditure of some thirty millions for Irrigation Works, besides many millions for State and other Railways, and other classes of works, he thought that this facility in favour of reproductive works

required watching. Besides, the broad division into reproductive and unproductive works, we might divide the former into three classes, *viz.* :—

Reproductive works where the return was almost immediate.

Reproductive works where the return, though pretty certain, was deferred.

The third or last class was one which he would not call, in the face of their classification, unproductive, but in which the returns upon the capital expended were very remote.

Attaching the greatest importance to the maintenance of the credit at present enjoyed by the Government of India in the money-market in England and India, he was anxious to call the attention of the Council to this subject, and to the expediency of distinctly showing to which of these three classes any projects, whether for irrigation or other reproductive works, belonged. No one had more strongly advocated the progress of Irrigation Works, and of other reproductive works, than himself, therefore he had no hesitation, being extremely solicitous of maintaining the high credit of the Government of India, in recommending that the Committee appointed to consider the Income Tax Bill, and to which the Hon'ble Mr. Bullen proposed improvements and additions in the mode of rendering the annual balance-sheet, should also arrange for the more distinct exhibition of the character of reproductive works. He was certain that, if this were carefully and lucidly done, the Government of India would gain, not lose, in the estimation of the money-market. To take a stock of past reproductive works, showing their cost and actual returns, especially when new works were in connection with, or improvement of, the old, might be advantageous. But certainly the Government of India would more and more command the confidence of the money-market, with respect to this growing item of reproductive works, the more distinctly it exhibited their character and prospects to the searching analysis of capitalists, and for this purpose the annual budget statement might, on the heading in question, be more explicit.

Sir Richard Temple said :—" I regret to be obliged to refer, though in the briefest terms, to the remarks which have fallen from His Excellency the Commander-in-Chief (Sir William Mansfield).

Remembering that we are both Members of the Executive Government, I cannot follow His Excellency's example by entering into any discussion regarding the financial deliberations of the Government of India.

Only I must state that I have not intended to cast, and in fact have not cast, any reflection whatever on the policy and proceedings of any of my predecessors. In reference to the accounting for the Barrack expenditure, I quoted the recorded authority of my immediate predecessor, Mr. Massey, in support of the manner in which I am now dealing with that expenditure. I explicitly affirmed the correctness of the financial conclusions which he stated according to the manner in which the accounts were then made up. And whatever explanation was offered in my budget speech on the loans, and the deficits and the Barracks, was given (as I expressly stated) ' in justice to what had been previously done.'

Next, I understood the Commander-in-Chief to say that I ought not to throw the whole burden of the deficit on the Barracks, which deficit ought not to be attributed to that single cause. This I allow, and I also allowed it in the budget speech. For though I certainly remarked that, under one view of the account, it might be said that the deficit was owing to the Barracks, yet I added " I do not at all mean to admit that the Barracks *ought* to be selected as the cause of deficit. On the contrary, I say that ' Barracks ought *not* thus to be singled out from our general expenditure.'

Then I understood the Commander-in-Chief to say that I applied the word ' intolerable ' to what was really the policy of my predecessor. I cannot perceive that I did anything of the kind. What I said was (as can be seen from the printed speech) that the ' running into debt for such a purpose (*i.e.*, the construction of Barracks) would be intolerable.' To that opinion I fully adhere. But I am certainly not aware that it ever formed part of the policy of my predecessor to run into debt in this way.

I am not sure that I can follow the Commander-in-Chief into what I understood him to discuss, as to whether these deficits were ' deficits proper ' or ' deficits at all' ; or as to whether these military works should be classed as ordinary or really extraordinary ; or as to the analogy to be drawn from the management of private capital. The ' deficit ' that I have to deal with means the difference which arises when the ordinary expenditure exceeds our income. *That* is the sort of deficit which I wish to be put an end to. The financial principle which I understand, and which has been enunciated by high authority in England, is this, that we must manage either to spend less than we receive, or to receive more than we spend.

Whether the expenditure heretofore incurred on the Barracks should be considered to have been defrayed from borrowed money or not, may be a ques-

tion. Be that as it may, however,—whichever way the account be looked at,—the existence of deficit is unfortunately beyond question, and the placing of that deficit in a clear light was the matter which I really had in hand.

I understood His Honour the Lieutenant-Governor of Bengal to say that according to the Schedule attached to the Bill, it would be impossible for the Collectors to guess the income derived by people from all sorts of sources. But in reality this guessing is the manner in which the late License Tax and the Certificate Tax have been worked. It was also the manner in which the Income Tax of 1860 had really to be worked. For is it not notorious that the returns required by that Act were not only vexatious to the people, but useless to the Collectors? In a vast number of cases the Collectors 'surcharged'; it might almost be said that the Act was worked by surcharging. Now what were these surcharges? Why, guesses pure and simple. If the Collectors guessed then, they can do so better now that experience has so much increased. The task may not be easy, but the rough assessment will become more and more of an approximation as time and experience are gained. At all events, it is essential to avoid calling for returns.

In reference to what the Hon'ble Mr. Bullen very properly remarked, to the effect that the interest on the public securities forming part of the paper currency reserve should be credited and shown under some head of income in the budget, I have to state that this interest *is* so credited, and appears under head XVII on the receipt side of the budget, entitled 'Interest.'"

The Hon'ble MR. STRACHEY said:—"In justice, my Lord, to the Hon'ble Sir Richard Temple, I think it right to say that there is, in my opinion, no reason whatever to attribute to him the imputation of having thrown discredit on the measures of his predecessor. It is impossible that Sir Richard Temple should have done so, for this simple reason that he has really proposed to do almost nothing beyond what was proposed by the Right Hon'ble Mr. Massey last year. Sir Richard Temple said that the running into debt for such a purpose as building Barracks would be intolerable. It seems to me that this was little more than what Mr. Massey himself said a year ago, and he gave the best possible evidence that that was his real opinion when he invited the legislature to impose the Certificate Tax. For Mr. Massey might have said with perfect truth that if we charged the expenditure on account of these Barracks, not to income but to a loan, that tax would have been altogether unnecessary. And as His Excellency the Commander-in-Chief has referred to the discussions which took place in the Execu-

tive Council under the Government of Sir John Lawrence, I think it right to say that exactly the same objection (if I understood His Excellency rightly) which has now been made by His Excellency to the statement of Sir Richard Temple, was made by His Excellency a year ago to the measures of Mr. Massey himself. His Excellency then protested against the imposition of a Certificate Tax for the purpose of building these Barracks, and he complained that Mr. Massey was setting aside the sound policy of the last three years, which had been approved both by the Indian and Home Governments. I myself endeavoured, in the debate on the budget of last year, to controvert these opinions, and the views which I stated on that occasion were concurred in by the late Viceroy. I think, therefore, that the charge, if I may so call it, which has been brought by His Excellency the Commander-in-Chief against Sir Richard Temple, of having treated his predecessor with scant respect, is really not deserved. It was said by the Hon'ble Mr. Cowie (and I gathered from the remarks of His Excellency the Commander-in-Chief and Sir Henry Durand that they were somewhat inclined to agree with him) that this deficit, which was now to be met, had really been caused by charging the cost of the construction of the Barracks to revenue, and the Hon'ble Mr. Cowie stated that he considered that these charges ought to be met by borrowing. I am by no means prepared to admit that there has really been any change of policy in regard to this matter; for, so far as I have been able to discover, the policy which we are following now is in all essential respects the same as the policy followed for the last three years. Certainly it is the same as that followed by Mr. Massey last year. But whatever may have been formerly the case, the policy of the Government, which has been strongly supported by the Secretary of State, is, I think, under present circumstances strictly correct, that we ought not to borrow for these works but pay for them out of income. I think that the answer was complete which has been repeatedly given by Sir John Lawrence and by others to the opinion that charges such as this should not fall on the taxpayers of the present day. If there were any real prospect, when these Barracks were completed, that we should be able to reduce our ordinary expenditure on Public Works, something might be said in favour of borrowing for these works and throwing a portion of the burthen on those who come after us. But in reality there is no such prospect. Demands for works of public improvement may be considered to be practically unlimited. If these Barracks ought to be constructed out of borrowed money, the same might with equal propriety be said of our jails, our court-houses and a hundred other necessary works. The most pressing object at the present time is to afford better accommodation for our soldiers, but a thousand other equally pressing demands will infallibly arise hereafter, and indeed they arise already every day. If those demands are resisted, they are resisted only because it is impossible to meet them.

In the debate of last year I mentioned that in two provinces alone, Bengal and Bombay, which had £2,055,000 allotted to them for Public Works, demands for urgent works in addition, amounting to more than two millions of money, had been made; and I said that the same sort of story might be told of all the other provinces in India. The same thing happened every year. Thus I have now before me letters from the Government of Bengal regarding the allotment of funds for Public Works during the ensuing year. I find that the total sum granted for Bengal was nearly $1\frac{1}{2}$ millions, out of which only £250,000 were allotted for the construction and maintenance of military buildings; but although nearly the whole of this grant was on account of works for the civil administration and public improvement, His Honour the Lieutenant-Governor stated that he had been unable to provide to any extent for any new civil works. His Honour shortly afterwards submitted a list of urgent works which required immediate attention; it includes court-houses and sub-divisional buildings, lock-ups, jails and a great number of other works which have become necessary from improved administration, the increase of Europeans in the country and a number of other causes. Nearly all the jails are said to require alteration to fit them to the improved system of the day, and His Honour goes on to mention many works of most pressing importance for the improvement of the country. It cannot, I fear, at the present time be denied that in consequence of these great demands for military works, we are to some extent starving works of great importance throughout the whole of India. But however much we may regret this, it arose necessarily from the fact that our means are limited. Long after these Barracks are completed, our successors will certainly hear the same story, and will find that the requirements of the country are infinitely greater than the means for meeting them. Posterity will have enough to do in meeting its own burthens, without having to meet ours also. If we were now to borrow for Barracks, we should be borrowing for works which were quite as legitimate charges against income as any other expenditure of the year. And to borrow for such purposes now would be especially objectionable, when we have embarked on a great system of borrowing for railways and other great works of improvement, which however profitable they may ultimately prove, will be for many years a heavy burthen on the income of the State.

Fortunately the sum we have now to raise is very insignificant, only the sum of £350,000.

Borrowing being put out of the question, the Government had to consider what was the measure of taxation by which this sum could be raised with the

least possible objection. It is highly satisfactory to find that there has been in this Council (and also outside these doors) a general concurrence in the proposals of Sir Richard Temple. When the Certificate Tax was imposed, and before that when the License Tax was imposed, there were considered to be special reasons for preferring those taxes to a general tax on incomes. The tax in the restricted form it then took was at the time much more generally approved by the public, and for other valid reasons it was preferred by the Legislature. Moreover the sum which it was expected to yield was enough to meet the requirements of the Government as they were then estimated. But, however wise it may have been formerly to adopt the system actually in force, I think it clear that the right conclusion has been come to, that now, when we want more revenue, it is wise to provide for the extension of the existing law. The Certificate Tax is nothing (as has always been admitted) but an Income Tax falling on the commercial and professional classes only. It has been, as everybody knows, the constant objection to an income tax in England and in all other countries where an income tax has been imposed, that it fails to recognize the injustice of taxing incomes from temporary sources at the same rate with incomes of a permanent character ; and if no remedy has hitherto been applied for this injustice, I believe that the reason is simply this, that it has been found impossible to determine what that remedy should be. But in India we have singled out the classes which derive their income from temporary sources as the sole classes on which the tax is to be imposed. We tax the precarious profits of trade, and the hardly-earned salaries of the servants of Government, but we leave untouched all incomes of a permanent character, such as those for instance of the great landholders of Bengal, who, though they constitute the richest class in all India, and the class which has perhaps derived the greatest advantage from our Government, undoubtedly contributes less in proportion to its means than the very poorest and most degraded classes in the country. I think it clear that it is unjust that such classes as this should escape direct taxation. Even if no more money had been now wanted, I should have said that we ought to correct this injustice by extending direct taxation to all classes of the community. It fortunately happens that the same process by which we correct a flagrant anomaly, and by which we render our system of taxation more equal, enables us, without throwing any additional burthen on the present taxpayers, to obtain the additional funds now required for the service of the State.

His Honour the Lieutenant-Governor and the Hon'ble Mr. Shaw Stewart have referred to difficulties which they anticipate in consequence of the fact that, under the Bill, it is not proposed to call for any returns of income, and they have expressed their fears that it will be impossible for Collectors to make any thing

but the widest guesses of the income of those whom they have to assess. It appears to me that no special or new difficulties of this kind will arise. In point of fact the only serious difficulty in assessing the old income tax—and it is the only serious difficulty felt in assessing the income tax in England—was felt in regard to the assessment of the incomes of those very classes who, for the last three years, had been taxed under the license and certificate taxes. That difficulty has been got over, and it has been generally admitted to have been got over in a manner fairly satisfactory. I can see no reason why, if this difficulty was got over in the case of the Income Tax of 1860, and under the License and Certificate Acts, there should be any difficulty in getting over it under the proposed new law, which practically maintains the whole procedure of the existing Act. There can be no more necessity for the exercise of inquisitorial powers or calling for returns or harassing enquiries in carrying out the proposed law, than there was under the certificate or license taxes.

The Hon'ble Mr. Cowie seems to think that it would have been wise to impose this income tax at a higher rate, and to take the opportunity of carrying out reforms in the customs duties. I think that it cannot be denied that the income tax throws on the professional classes and on persons with fixed incomes a comparatively heavy burden, and I must confess that the evil of this inequality is, in my eyes, aggravated rather than diminished by the fact that the chief sufferers are my own countrymen, on whose energy and integrity India, at the present time, is mainly dependent for its progress. The evil of this inequality is further aggravated by the fact that the same classes on whom the income tax falls the heaviest, are those which pay the largest share of the customs duties. With reference, therefore, to the remarks made by Mr. Cowie, I will say for myself, that I sincerely hope that the time may come when we shall see great reforms carried out in our system of indirect taxation, and I believe that such reforms will conduce to the benefit both of the taxpayer and the State. The measure now before the Council is at any rate a step in the right direction; it is based on a true principle, and while it provides for the immediate necessities of the State, it will tend to make our system of taxation more equal and more just."

His Excellency the President said :—" I cannot allow this discussion to close without expressing in a few words my satisfaction that the proposals made by Sir R. Temple on the part of the Government have been received with such general assent. In such a large scheme as has been submitted, it is impossible to expect that some exception should not be taken to many of its details.

It must be a source of great satisfaction to all those who were responsible for the budget, as explained on Saturday last, that no serious opposition has been made to it in any quarter whatsoever. I think, however, that I should not be doing my duty were I not to express my entire concurrence in the principle which is really the basis of the financial scheme for the present year—a principle which will, I hope, form for the future a leading feature in Indian Finance; which has been adopted with great advantage at home, and has received the sanction of two Secretaries of State—namely, that expenditure on works which are not of a clearly reproductive nature, are for the future to be borne by the ordinary revenue of the year.

There may be some difference of opinion on this subject, but I believe that it is so inherent a principle of all sound finance, that though the taxpayers of to-day may be called upon to make some present sacrifice, yet that it will eventually be found to lead to such economy and to such a satisfactory mode of dealing with all our great sources of expenditure, that, before long, it will be generally accepted as containing the elements of increased credit and lasting security.

Now, I think that the distinction between reproductive and unproductive works may be very easily drawn. I do not propose here to discuss the question, or to refer to the difference between military barracks and other kindred works, but it is very easy to distinguish these from works which are essentially reproductive, and which may be expected at no very distant time to bring in a direct return to the State, and to discharge in full those monies which have been advanced to them, and so relieve the Exchequer from permanent charge.

Now, there are two great heads of expenditure which may be placed under the reproductive class—namely, the large liabilities which we are about to undertake at a very early period for the purposes of irrigation, and also any expenditure which may be deemed necessary hereafter for the construction of State Railways. There may be other important works—such as the improvement of our harbours, the cleansing and water-supply of our towns, and the erection of bridges in populous places—which, there being therein a distinct prospect of speedy return of capital invested, may be brought into the category of reproductive undertakings. There can be no difficulty therefore in comprehending the principle upon which our finance is to be conducted for the future, namely, that as we have the power, we are determined to make every effort to discharge all expenditure, which is not of the character to which I have referred, out of the ordinary revenue of the year. There is an additional reason why it is so essential that this principle should now be adopted, and that we should declare our determination to adhere to it as long as possible.

This reason was alluded to by my Hon'ble friend Mr. Strachey, and cannot be expressed too strongly.

There is no doubt that probably we are now entering upon a time for borrowing for reproductive objects to a far greater extent than has been attempted before. I am in hopes that our power of borrowing for these great reproductive works may for the future only be limited by the power of the money market to yield, by the extent of our constructive organization, and by the capacity of the revenues of the year to pay the interest of a loan which must in its nature be temporary. Under these circumstances, we are bound to be most prudent, and to show that our general finance is in a thoroughly sound state; for it is possible that if in time of peace we were forced to go to the money-market to meet a deficiency in ordinary revenue, we might find investors shy in entrusting their money to a Government which had been unable to conduct their affairs according to the rules that should guide the ordinary affairs of men. But if it is known that we do not propose to make any addition to our permanent debt, that every shilling we borrow will be laid out on works which carry with them the certainty of repayment, and at the same time will add to the general prosperity of the country, we can have no fear that Indian credit will hold the position it now does in the markets of the world. I have a lively recollection of the result of a different course which was taken at home—a course which, I own, I at one time supported, but which, I believe, is now deemed by its authors to have been unsatisfactory and wasteful. I am not without recollection of a circumstance which took place some years ago, when a debt of eleven millions was incurred for coast defences, fortifications which have not been completed, are now almost useless, and will never benefit the posterity who will have to pay for them.

With regard to what Mr. Bullen stated in respect to the home charges and the deficiency of information that is afforded to the public concerning them, I can only say that a statement of the details of those charges is published every year, and certainly ought to be circulated as widely as possible. I am not prepared to say that advantage might not arise from exhibiting these home charges in a form a little more minute than they are at present. I will make further enquiry, and if I find it necessary, I will take care to make a representation on the subject to the Secretary of State.

With regard to the remarks of the Mahárájá of Balrámpúr on the subject of the salt tax, I can only say that it is our intention to endeavour, by every means in our power, to reduce the cost of the carriage of salt, and, if necessary, to provide for its local manufacture. The whole question of the duty is one of very great importance and also of difficulty; but with regard to the establishment of such

local manufacture as would bring salt more nearly to the homes of the taxpayers, I can only say the Government are at present engaged in the consideration of measures to effect that object, and I hope, before long, we may be able to reduce the price of salt in some of those districts where its price is highest, and the impost is consequently most oppressive to the taxpayer.

I entirely concur with what has been said by my Hon'ble friend Sir Henry Durand, with regard to reproductive undertakings, that the returns of each work should be shown as distinctly as possible, and that the form of accounts should be of that character that everybody should know, in the first place, what are the prospects of the work which has been undertaken, and secondly, what are its exact returns. I think that the whole success of these great works which we are about to undertake, depends upon that principle of account being most rigidly adopted. I believe nothing would tend more to create confidence in the Government than their being able to show the exact position and products of each particular work. I can only say, in conclusion, that I believe everyone of my colleagues is fully impressed with the necessity of endeavouring in every branch of expenditure to enforce the most rigid economy that is consistent with efficiency. It is well known that in every department of the Administration constant efforts are being made to enquire into and to see how expenditure can be kept within its proper limits.

These enquiries have been attended with success in many departments for the last few years, and I am in hopes that whatever may be said with regard to our general policy, a charge of reckless or wilful extravagance will never be laid to the door of the Government of India."

The Motion was put and agreed to.

POLICE SUPERANNUATION FUNDS' BILL.

The Hon'ble Sir Richard Temple also moved that the Bill to abolish the Police Superannuation Funds be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

TRANSHIPMENT OF OPIUM BILL.

The Hon'ble Sir Richard Temple also moved that the Bill for imposing a transhipment fee on Opium be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

LAND CUSTOMS' BILL.

The Hon'ble SIR RICHARD TEMPLE also introduced the Bill to make better provision for the collection of land customs on certain foreign frontiers of the Presidencies of Fort Saint George and Bombay, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

CUSTOMS' DUTIES BILL.

The Hon'ble SIR RICHARD TEMPLE also introduced the Bill to amend the law relating to Customs' Duties, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill for imposing duties on Income and Profits arising from Offices, Property, Professions and Trades—the Hon'ble Messrs. Maine, Cockerell, Gordon Forbes, Cowie, Shaw Stewart, Bullen and the Mover.

On the Bill to abolish the Police Superannuation Funds—the Hon'ble Messrs. Maine, Strachey, Cockerell, Gordon Forbes, Shaw Stewart and the Mover.

On the Bill for imposing a transhipment fee on Opium—the Hon'ble Messrs. Maine, Cowie, Shaw Stewart, Bullen and the Mover.

On the Bill to make better provision for the collection of land customs on certain foreign frontiers of the Presidencies of Fort Saint George and Bombay—the Hon'ble Messrs. Maine, Gordon Forbes, Cowie, Shaw Stewart, Bullen and the Mover.

On the Bill to amend the law relating to Customs Duties—the Hon'ble Messrs. Maine, Gordon Forbes, Cowie, Shaw Stewart, Bullen and the Mover.

The Council adjourned till the 12th March, 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA;
The 11th March, 1869.

S. G. P. I.—No. 77 L. D.—30-6-11.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the Provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 12th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P.,G.C.S.I., *presiding.*

His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.

Major General the Hon'ble Sir H. M. Durand, C.B.,K.C.S.I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C.S.I.

The Hon'ble Mahárájá Sir Dig-Bijay Singh Bahádur, K. C. S. I., of Balrámpúr.

The Hon'ble G. S. Forbes.

The Hon'ble D. C. Cowie.

The Hon'ble M. J. Shaw Stewart.

FOREST RULES (BRITISH BURMA) BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to give validity to certain Rules for the administration of Government Forests in British Burma be taken into consideration. He said that this Bill had been reported by the Select Committee with a merely verbal alteration. But as it might have the effect of stopping certain suits which had been either threatened or brought in the Recorder's Court at Moulmain, he would again explain its object. Act XXX of 1854 was an Act to provide for the levy of customs in the Arakan, Pegu, Martaban and Tenasserim provinces. Sections 6, 7 and 8 enabled the Governor General in Council to impose import duties on teak-timber entering the province from foreign territory by the rivers, and to make Rules for the floating of such timber, the penalty on contravention of the Rules being confiscation. These sections had therefore an especial bearing on the timber brought to Maulmain for exportation, and Rules appear to have been at once made under them, and duties imposed. More recently, Act VII of 1865 became law, which enabled the Government to make Rules relative to timber floated or

otherwise, but the timber must be the produce of Government forests. It received the assent of the Governor General on February 24th 1865, and in August of that year the Rules which Mr. Maine held in his hand were framed. They purported to have been made under Act VII of 1865, and the largest portion of them were undoubtedly valid under that Act. Certain of them, however, and particularly those relating to the station at Kuddo, were of doubtful validity, inasmuch as they applied to foreign-grown timber and imposed duties. The whole of the Rules were within the competence of the Government to make; but the mistake had been made of amalgamating them instead of issuing them separately under the two Acts. On the question whether timber in British Burma was unduly burdened with duty, Mr. Maine offered no opinion; but that question ought to be considered on its merits; the discussion on it should be initiated in the Financial Department and continued in this Council upon full information. It ought not to be settled through the discovery, if discovery it were, that certain Rules had been wrongly headed. The Rules purported to have been confirmed by the Government of India. Mr. Maine was absent on leave in England at the time of their issue, but he could not say that if he had been in India they would necessarily have come under his notice; he desired to state that, under orders issued by the late Viceroy not long before his depature, all Rules made under Acts,—which Rules were in fact a subordinate legislation,—would be sent to the Legislative Department for review, and if necessary for revision, so that it might be hoped that even this venial class of error would not again occur.

The Motion was put and agreed to.

The Hon'ble Mr. Maine also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL COURTS (BOMBAY) BILL.

The Hon'ble Mr. Shaw Stewart presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.

CRIMINAL PROCEDURE BILL.

The Hon ble Mr. Shaw Stewart also moved that the Report of the Select Committee on the Bill for regulating the procedure of the Court of Criminal Judicature not established by Royal Charter be taken into consideration. He said that it would be in the recollection of the Council that when he first obtained leave to introduce this Bill, he had said that since the Code had been passed numerous suggestions for its amendment had been received by the Executive Government. Those papers were referred to the late Mr. Gordon who under-

took the task of comparing and examining them. At his death, the paper were referred to an informal Committee consisting of the Hon'ble Messrss Brandreth, Hobhouse, and himself. In the course of the session of last year. MR. SHAW STEWART received an intimation from the Home Office that the time had arrived for bringing forward a revision of the Code, and he obtained leave to introduce a Bill. When he introduced the Bill, he did not refer it to, Select Committee at once, but the Bill was merely introduced and published for a year. In the course of that period but few reports on the subject had been received. The suggestions received were not very numerous or important the principal being from the Government of Madras and the High Court and District Officers of that Presidency, and they had received the careful consideration of the Committee. Since the Bill was published, as he stated at the time, a despatch had been received from the Secretary of State, expressing the wish of the Home Government that the subject of the general amendment of the Code should be left to the Indian Law Commissioners, and that at present this Council should confine itself to amending the provisions of the Code without touching on any question involving matters of principle. These instructions had been carefully attended to by the Select Committee, which had been fortunately composed of officers who represented many different parts of India. Besides having the assistance of the members of the Executive Government in charge of the Legislative and Home Departments, the Committee had consisted of members who were acquainted with the procedure in Bengal, Madras and Bombay, and the Non-Regulation Provinces of India, and the subjects brought before them had, therefore, received due attention. The report of the Committee was so full and detailed, that MR. SHAW STEWART thought there were very few points on which it would be necessary for him to make any remarks. He should, however, go through the Bill and explain the few points on which further explanation seemed necessary, reserving for the present any remarks regarding the sections which he proposed to amend.

He would first refer to the section marked 23A. This was one of the sections the object of which was to enable the Local Government to delegate to officers under it the power of appointing Magistrates and Subordinate Magistrates. This would materially assist the administration of justice in the country. At present every appointment of a Magistrate, however small his jurisdiction, was required to be made by the Government and published in the Government Gazette. The power of delegating that authority to officers such as Commissioners and other high officers, would be very convenient, both as admitting of such appointments being made expeditiously and relieving the Gazettes of notifications which now crowded them.

He next came to section 61, in which an amendment was made with the intention of allowing a fine imposed on the offender to be levied on any property of his wherever it might be found. By the section as it now stood in the Code, the levying of the fine by distress and sale of property was limited to property within the jurisdiction of the Court passing sentence. It often happened that an offender had made away with his property and removed it to a different district: the power of levying the fine by distress of such property would now be given to the Court by which the offender was sentenced.

By section 114 as it stood on the interpretation of more than one High Court, search-warrants could not be issued unless the officer issuing the warrant specified exactly the property for which search was to be made. It was believed by the Committee that that was an inconvenient restriction; that it was often necessary, in the event of a crime being committed, to search the neighbouring houses for the purpose of tracing anything that might lead to the discovery of the offender. The amended section would therefore admit of the exercise of that power when the Court considered that the enquiry would be furthered by the inspection of any house or place.

The next sections to which he would refer were sections 130 to 132 C, which related to the proceedings to be taken when property seized by the Police was brought before the Court. The law had been interpreted in different ways in different parts of India, and there was considerable doubt as to what should be done with property brought before a Court, and regarding which an offence appeared to have been committed. Amendments had been adopted which admitted of the Criminal Courts passing any order which they thought right for the disposal of such property.

Section 185, as it stood before, provided for the property of an offender absconding and forfeited under section 184 being restored, if within two years after the attachment the offender surrendered himself and proved that he did not abscond for the purpose of avoiding justice. There was no provision for the restoration of the property in the cases of the offender being apprehended or not being brought to trial. It was quite possible that after property was forfeited it might be found that the offence was not committed, and for many other reasons it might be undesirable to bring the person to trial. The Committee had therefore worded the section so that property might be restored to the offender if he appeared or was found within two years after the attachment of the property, and proved to the satisfaction of the Court trying him for the offence of which he was accused, or, if not tried or committed for trial for that offence, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice.

In sections 209, 210 and 211 amendments had been made with the object of correcting and amending the law relating to the tender of pardon to an accomplice, with the view to his becoming Queen's evidence. Pardon might now be tendered by any Magistrate authorized to take up a case triable by the Court of Session, and the Court of Session was empowered during the progress of a trial to tender a pardon, instead of being obliged, as at present, to refer the accused person to the Magistrate for such purpose. The procedure before the Court of Session would be simplified by this change.

In section 270, as stated in the report of the Select Committee, an alteration which appeared in the Bill as recently drawn, had not been adopted. It was proposed originally to extend the power of giving compensation for frivolous or vexatious complaints, to cases of somewhat greater importance than those to which it now extended. This was considered a question of principle which should be left to be dealt with by the Indian Law Commissioners, but the Committee had made some slight amendments in the section.

The next section he would notice was section 276. By the law as it stood, great inconvenience was experienced from the direction that, when a Subordinate Magistrate found during a trial that he had not jurisdiction, he must refer the matter to the Magistrate of the District. The Magistrate of the District might at the time be at a great distance from the Magistrate trying the case, and there might be some other competent Magistrate close at hand. Power had therefore been given to a Magistrate trying a case in which he found he had no jurisdiction, to refer the case to the Magistrate of the District, or to such other Magistrate as the Magistrate of the District might direct.

In section 322 a discretionary power had been given to the Local Government, at the time that it directed trial in any district to be by jury, to direct that the jurors in such trials shall be sworn. There was some difference of opinion as to the propriety of administering an oath to jurors; it was therefore felt that it would be better to leave a discretion to the Local Governments. In some parts of the country such a procednre might be very desirable ; in others it might not : the Local Government would therefore have the power of directing the oath to be administered or not as it thought fit.

In section 395 an amendment had been made with the object of securing the more frequent examination of criminal lunatics. At present such persons were only required to be examined once in every twelve months. It was proposed to require the examination to be made every three months. It was very undesirable that a man who was restored to sanity should remain for

twelve months in a lunatic asylum before an examination into his case was made.

In sections 413 and 415 the Committee had made alterations which would admit of appeals being preferred beyond the period of thirty days now prescribed.

Section 422 contained perhaps one of the most important points that the Committee had taken cognizance of. By the section as it stood, it was held by one of the High Courts that it was competent to the Appellate Court to enhance, in certain cases, the sentence appealed against. The Committee had no hesitation in considering that that power was not intended to be given by the framers of the Code. They had therefore added words which would prevent such enhancement in future.

There was also another alteration in the same section. It appeared that the language of this section of the Code was vague as to the attendance of the appellant at the further enquiry required by the Appellate Court. It might be very inconvenient to take the appellant from the jail in which he was confined, to a distant part of the district where the further enquiry was to take place; and it might also, in the opinion of the Appellate Court, be unnecessary that this should be done. The Committee had therefore given to the Appellate Court the power of directing that the appellant should be present, and had left to the Magistrate the option of having the appellant present or not, even if the Appellate Court did not direct it.

There was one section the necessity for amending which was brought before the Committee, but after much consideration it was determined to omit it. That was section 138, which required that every person who was aware of the commission of certain offences should give information thereof to the nearest Police officer. The offences mentioned in the section were all of a formidable nature, such as robbery, dacoity, lurking house-trespass by force, and other offences of a serious nature; but from this list one of the most serious offences had been omitted. It had been argued that murder ought to be included in that list. Mr. Shaw Stewart believed he was right in saying that the reason why the framers of the Code did not insert murder in that list was, if the concealment of murder was made punishable, it would be difficult to get information of those domestic murders which were unfortunately somewhat common in this country. A murder took place in a house, and its inmates concealed it, the police went to make enquiries, and these inmates were the only persons from whom they could gain information of the offence; but of course they would give no information if it was punishable to have concealed their knowledge.

On the whole the Committee were of opinion that it was a question of principle that had been settled by the framers of the Code, and had better be left for the consideration of the Indian Law Commissioners.

The Motion was put and agreed to.

The Hon'ble Mr. Shaw Stewart then moved that, in section 23G, the word "otherwise" be inserted after the word "as" in line 1. The object of the amendment was to assert the subordination of all Magistrates in the district to the Magistrate of the District. It appeared that there was considerable doubt as to the extent of that subordination. Some officers in the position of Assistant Magistrate, but with full powers, thought that in consequence of appeals from their decisions lying directly to the Sessions Court, they were exempted from subordination to the Magistrate of the District. That opinion had been put down as much as possible by the Executive Government, but still the law was not clear on the subject. The Committee had therefore recommended that that subordination should be clearly stated. The word now proposed to be inserted appeared to have been inadvertently omitted.

The Motion was put and agreed to.

The Hon'ble Mr. Shaw Stewart moved that the following section be included under section IV of the Bill:—

"409. Any person convicted on a trial held by the Magistrate of the District or other officer exercising the powers of a Magistrate, or required by such Magistrate or other officer under section 295 or 296 to give security for good behaviour, may appeal to the Court of Session of the District."

He said, as stated in the report of the Committee, the provisions of the law relating to appeals were carefully preserved; but section 409, as it stood in the Code, contained the following words at the close of it:—"may appeal to the Court of Session to which the Magistrate or other officer is subordinate. To prevent mistakes, it was as well to avoid any reference to the subordination of Magistrates to any one except the Magistrate of the District. It was therefore proposed to insert the words "of the District" after the words "Court of Session," in lieu of the words above referred to.

The Motion was put and agreed to.

The Hon'ble Mr. Shaw Stewart moved that the following section be substituted for section 435:—

"435. In the case of offences specified in the seventh column of the schedule to this Act annexed as triable by the Court of Session only, or by the Court of Session or Magistrate of the District, the Court of Session may order the commitment of any accused person who may

have been discharged by any Magistrate. In the case of such offences the Court of Session may order an enquiry into any complaint which any Magistrate may have dismissed without enquiry.

"In the case of such offences, the Magistrate of the District shall have like powers where the Magistrate who has discharged the accused person or dismissed the complaint without enquiry is a Subordinate Magistrate.

"If the Court of Session consider that any person convicted by a Magistrate, has committed an offence not triable by such Magistrate, it may annul the conviction and sentence, and direct the commitment of the accused person for trial before itself."

He said that section 435 as it stood gave the Court of Session the power of ordering the committal of an accused person discharged by the Magistrate, or of ordering an enquiry into any complaint dismissed by the Magistrate without enquiry. The only alteration proposed by the amendment went to give a like power to the Magistrate of the District as regarded Subordinate Magistrates.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that, in the last clause of section 44, the words 'to the person injured' and 'to him' be omitted, and that, in section 133, for "138," the figures "108" be substituted.

The Motions were severally put and agreed to.

The Hon'ble MR. SHAW STEWART moved that, in section 322, the words "at the same time" be omitted in the second clause of the section.

These words, he said, had been inadvertently added, and their omission would enable the Local Governments to direct that jurors should take oaths in cases where they had already ordered that trials should be by jury.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART further moved that, in the seventh column of the schedule, opposite section 347, the word "*ditto*" be read in lieu of the words "*Court of Session or Magistrate of the District*:" and that opposite section 381, the words "*Court of Session or Magistrate of the District*," be read in lieu of the word "*ditto*."

The Motions were severally put and agreed to.

The Hon'ble MR. SHAW STEWART then moved that the Bill as amended by the Select Committee together with the further amendments now adopted be passed.

The Motion was put and agreed to.

PRISONERS' TESTIMONY BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to provide facilities for obtaining the evidence of prisoners, and for service of process upon them.

HIGH COURT (N. W. P.) CRIMINAL PROCEDURE BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to amend the procedure of the High Court of Judicature for the North-Western Provinces.

The Council adjourned till the 18th March 1869.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 12th March 1869.

Government of India Central Printing Office.—No. 175 L. D.,—11-7-84.—70.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 18th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding*.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpúr.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

INCOME TAX BILL.

The Hon'ble SIR RICHARD TEMPLE, in presenting the report of the Select Committee on the Bill for imposing duties on Income and Profits arising from Offices, Property, Professions and Trades, said :—

"The Bill as amended by the Committee is the same substantially as that which I presented to the Council at the previous special Meeting (March 11th). The alterations are few, and some of them only need now be selected for notice. The first point to be noticed is paragraph 4 of the Committee's report, where they say 'We have struck out the exemption of Insurance Companies.' At first this exemption was proposed, not because we thought that such Companies, however beneficial, should be exempt, but because we feared that it would not be possible to assess them properly. And no doubt under a strictly regular procedure there would be difficulty. But after consulting the non-official members of the Committee, we believe that, under the rough procedure

contemplated by this Bill, it will be possible to arrive at a sort of estimate which may approach what is fair. It seems better therefore to let the Collector ascertain the assessable profits as nearly as he can. And we have therefore, on the general principle, disallowed the proposed exemption.

In their paragraph 5, the Committee say 'We have omitted in section 6 the words so residing or serving, and thus made chargeable salaries, &c., paid in British India to the agents of persons residing abroad.'

In reference to this we have considered whether the interest on Indian Government securities, drawn in India by agents on behalf of persons residing abroad, should be liable to the tax. Now, considering that principals in India, drawing their own interest in India, are liable to the tax, we hold that if any person draws the interest in India through an agent, he is liable equally as if he had drawn it himself while residing in the country. We do not see how a distinction can be drawn between the two cases. This decision we have arrived at after carefully consulting the non-official members of the Committee. But we fully maintain the rule that no attempt should be made to impose this tax on persons residing out of India and drawing also out of India (that is, in England) interest on Indian Government securities.

It will be noted that, in their 8th paragraph, the Committee say 'We have extended the privilege of paying by instalments to cases where the amount payable is rupees twenty-four.'

This is a concession for the convenience of the comparatively poorer classes of tax-payers.

Further, we have considered the practicability alluded to by me at the last special Meeting of the Council, of permitting to employés of private firms to pay the tax by monthly instalments in the same manner as the servants of Government and of Companies. We found, however, after consulting the non-official members of the Committee, that this could not be managed without calling on the firms to render returns of their salaried servants; and this would be an infringement of the principle of the Act, whereby it was decided to abstain from demanding any returns that could possibly be avoided.

In thus avoiding returns of every kind throughout this Act (with the fewest possible exceptions), we consulted, not the fiscal advantage of the Government, but the convenience of the tax-payers. We hope that, appreciating this consideration, the tax-payers will meet the Government half-way, and will

afford such fair and reasonable assistance to the Collectors as may be required for the making of a proper assessment. We hope that, in this respect, the present rough procedure may work so well that we may not in any future year be obliged to ask this Council for power to demand returns.

Such being the few remarks I have to make on the details of the Bill, I must further mention that we have considered two memorials presented by the British Indian Association, one of a general character against the principle and policy of the Bill; the other adverting to some of its details.

As regards the general objections to the measure, I cannot give a stronger answer than that which is contained in the substance of my Budget Statement to this Council. The memorialists may be sure that we are perfectly satisfied and convinced of the lawfulness, legality, justice and expediency of applying this tax to land-owners, whether under permanent settlement or otherwise.

The memorialists seem to think that I have not analysed the causes of the increase of expenditure that has been going on for years, and have not fully explained the recent deficits. Hereon I must refer them to my Budget exposition, where the deficits of the two years which I had to deal with *are* explained. As to analysis of expenditure, I did in that exposition analyse each item of increase, in general terms, according to the limited time and space at my disposal. No doubt, this analysis referred only to the two years with which I was concerned. For the increases of the years prior to this period, I would refer the memorialists to the statements and expositions presented year by year by my predecessors to this Council. If these be not enough, I would further invite the attention of the memorialists to a volume (recently published by Government) of the financial statistics of the past five years, where every sort of information can be found, in abundant detail, tabulated specially to facilitate comparison. It is only by bestowing upon these publications the attention they merit, that the progress of British Indian finance can be understood.

Of the particular objections, two may be selected for brief notice. The memorialists urge that various charges incident to land may be deducted from the profits assessable to this tax: in other words, that the tax may be assessed on the nett profits of land after deduction of various expenses. We have decided not to insert any conditions of this sort in the Act. In cases such as that of Companies, we have used the words nett profits. And no doubt, as regards many kinds of business, there is no difficulty in deducting all the expenses really necessary for the carrying on of that business. In the case of land, however, there is some difficulty. For it is not always easy to say what is the *necessary*

expense of management. That would vary according to the circumstances or even the habits of the landlord; would depend on whether he were an absentee or a resident on the spot; and so on. There would be further variation according to the circumstances of the different parts of India. We have therefore preferred to leave all this to be decided by Executive Rules to be issued by the Government. This course will be preferable to anything like legislative elaboration of the conditions. I may say, however, that the Executive Government does not desire to allow less to the landlord in these respects than what was allowed in the first income-tax. Without giving any precise engagement, I may add that, as a rule, what was allowed in the first income-tax will be allowed in this one also.

The other objection refers to the section which prescribes that arrears of this tax are to be realised by the same process as arrears of land-revenue. This the memorialists seem to think will somehow be an infringement of the permanent settlement. I cannot see the force of this objection. When land, even under permanent settlement, may be sold in satisfaction of private debts, why may it not be sold in satisfaction of the lawful dues of the State? It is hoped, however, that no necessity for proceeding to such an extremity under this Act will ever arise. I may add that this section was taken from the Certificate Tax Act.

I have, in conclusion, to thank the non-official members of the Select Committee for the useful and practical advice afforded by them on all parts of the Bill. And once more, on this as on so many other occasions, I have to declare our obligations to the Secretary to the Council."

The Hon'ble Mr. Bullen said, if he understood correctly what had fallen from the Hon'ble Sir Richard Temple with reference to the memorial of the British Indian Association, he (Sir Richard Temple) had said that provision was made by the Bill for the deduction from gross profits of the expenses incident to the carrying on of all trades and occupations, but that the same exemption could not be made in the case of profits derived from land. Mr. Bullen did not know under what section of the Bill the deductions referred to would be made, but as far as he had been able to discover, there was no section in the Bill which provided for the making of such deductions. He considered it a great oversight on the part of the Select Committee, that the question of nett profits was not brought up and fully discussed in Committee. Part III of the Bill, relating to Companies, contained a distinct provision that the tax should be levied only on the nett profits; and Part IV provided that the duty should

be levied on all income and profits: the inference was that the duty under this Part should be levied, not on the nett profits, but on the gross profits. He was aware that it was not the intention of the Government that the duties levied on profits derived from trades and occupations should be levied on the gross income, but he thought a provision to that effect should be laid down, either in the Bill or the Executive Rules to be passed under the Act, so that it should be made clear that the duties would be chargeable only on the nett profits. He would only mention a few items which it was clearly necessary should be deducted before the assessment on profits was made. In the case of a person in trade, there could be no question that the rent of the business-premises was a fair charge against profits; in the same manner the salaries of persons employed by the trader should be deducted; so also losses occasioned by the insolvency of debtors, and also the interest on borrowed capital, if any. In the case of the owners of land, the expenses of the management of the land were surely a fair charge against the profits, and also the interest payable to the mortgagee, supposing the person in possession to hold the land subject to a mortgage. In the case of house-owners there would be the cost of triennial repairs and the collection of rents, the insurance, and the interest on mortgage, if any. Even in the case of persons residing out of India, who drew their incomes through the agency of firms or individuals, these firms or individuals exacted a certain commission on the duties they performed on account of their absent principals, and the commission which they charged should be deducted out of the income before it was assessed for duty under the Act. If that were not done, in all the cases which MR. BULLEN had instanced, the Government would get the tax twice over; first, from the person who was primarily liable; secondly, from the salaries of the assistants; from the owners of the houses, and from the capitalist who had lent money and who had to return the amount of interest received on his loan which in itself was chargeable for income-tax. He presumed there could be no doubt as to what the intention of the Legislature was, and he had only made these observations with the object of eliciting a distinct declaration on the part of the Government that the rules to be issued under the Act would be framed with the greatest exactness so as to provide for the omission to which he had referred

The Hon'ble MR. MAINE said that for his own part he could not accept the charge, if charge it were, which his Hon'ble friend had made against the Select Committee. Part III of the Bill applied to Companies, and there the expression "nett profits" was used because the Companies would make up their own accounts for the purposes of the Act, and would require some guidance in making up such accounts. Part IV referred to the rough and in some degree

conjectural assessment of income and profits by the Collector. No doubt there was not a definition of income or profits in this Part; but that was an essential feature of the Bill, and it had all along been intended that, as soon as the Bill became law, the Financial Department should issue Rules for the guidance of officers, which would deal with all the points adverted to by Mr. Bullen, and would instruct the Collectors to make practically the same deductions which had been made on the assessments for the income-tax. The word "nett" would have been out of place in Part IV, and its omission had been deliberately intended.

The Hon'ble Mr. Bullen continued—The Hon'ble Sir Richard Temple had alluded to the opinions which the non-official Members of the Council had given with reference to the question of exempting Insurance Companies. He himself could not draw any real distinction between the profits made by Insurance Companies, and any other profits derived from trade. It might be difficult to define exactly what were the profits derived from India of a Company domiciled in England but doing business here; but he did not think there was more difficulty in determining these than in determining the profits of other Companies similarly situated. He would instance the Peninsular and Oriental Steam Navigation Company. This Bill proposed to make certain of their ships liable to income-tax in respect of the profits made from their Indian business. It did not seem to him more difficult to define the profits of an Insurance Company from its Indian business, than the profits made by ships which traded, not only between Indian ports alone, but between Indian and other ports.

Another question which arose in Committee was with reference to taxing the incomes of persons resident in England, but deriving their incomes from the interest of Government securities here. He could not draw any distinction between incomes derived from Government securities and incomes derived from any other source. It was clearly not the intention of the Bill, for instance, that the owner of Indigo factories in India, residing in England, but carrying on the cultivation by means of agents here, should be exempted from the tax; and if a person residing in England, and deriving an income from that description of property, was not exempted, he did not see why any person residing out of India whose means were derived from the interest on Indian securities payable in India should be exempted. The only clear line which could be drawn was the line which the Bill had drawn, *viz.*, that paper enfaced for payment of interest by drafts on India should be exempted. The effect of that was to place such securities on the same footing

as loans raised by the Secretary of State, which the Indian Government had no power to tax. He thought that that made an intelligible distinction, and was the only line which could be properly drawn.

It occurred to him, on reading the Bill since the report of the Select Committee had been made, that there was a little ambiguity in section 14. He believed, however, that the intention of the Act was clear: the intention was that incomes of less amount than Rs. 500 a year, should be exempt from the tax. The Bill provided first, in Part II, section 7, that incomes amounting to less than Rs. 41-10-8 per month, which was exactly Rs. 500 a year, should not be chargeable under that Part; and section 14 provided that, in making such assessment, income exempted under section 7 should be treated as chargeable under this Part. That appeared inconsistent; but he believed it was intended that, if a person whose salary was less than Rs. 500 a year had an income from other sources also, the two might be added together, and the person thus made liable to the tax. That was also a point which MR. BULLEN thought should be clearly laid down in the Rules to which he had already referred—

The Hon'ble MR. MAINE did not think that there was any ambiguity. Possibly his Hon'ble friend had not read section 14 in connection with section 11. In order that the Collector might make an assessment under section 11, he must assess "in accordance with schedule A," or, in other words, he must bring up the annual income to Rs. 500. It might happen, however, that the income or profits chargeable under Part IV did not quite come up to the minimum. In that case, if the minimum could be reached by adding the salary of an office, that salary clearly ought to be taken into account, even though so small in itself as to be exempted under section 7.

The Hon'ble MR. BULLEN resumed—He did not think there was any doubt about the intention; but if that intention was not clearly defined either in the Bill or the Rules, some over-zealous Deputy Collector might think it his duty to tax incomes of the lowest amount, because it was nowhere distinctly provided that incomes under Rs. 500 should not be liable to tax under the Act. There were distinct provisions on this point in the Income Tax Act of 1860 and in the Certificate Act, but there was no provision in this Bill that incomes under Rs. 500 per annum should not be taxed; though of course it might be inferred that such was the intention, because the schedule attached to the Bill does not provide the amount of tax to be imposed on incomes under that amount.

In conclusion, he would wish, with His Excellency the President's permission, to take this opportunity of putting a question to the Hon'ble Member in charge of the Financial Department. The question that he wished to put was with reference to the payments made by the Government of India on account of the Abyssinian Expedition. It was no secret—indeed the Hon'ble Member had referred to the matter in his Budget Statement—that, to make these payments, large sums had been borrowed by the Government from the Banks of Bengal and Bombay; and commercial gentlemen were well aware that the advances were made by those Banks at rather high rates of interest. MR. BULLEN would therefore ask—*first*, if the Hon'ble Member would state the amount of interest paid or payable to the Banks on account of advances made by them to the Government for the expenses of the Abyssinian Expedition; and, *secondly*, whether it had been intimated to the Secretary of State that such interest should be charged to the English Government, and, if so, whether the English Government had agreed to its repayment or otherwise.

HIS EXCELLENCY THE PRESIDENT said, before the Hon'ble Sir Richard Temple answered the questions of the Hon'ble Member, he thought it right to remark that, according to the Rules of the Council, the questions were not strictly in order; and, therefore, in allowing the questions to be put, he wished to guard himself against its being made a precedent in future. He was induced to allow the questions to be put, though they were not strictly in order, because this was the last day on which the questions could be put.

The Hon'ble SIR RICHARD TEMPLE said, this particular point had for some time past engaged the careful attention of the Financial Department. He was not prepared to state at this moment the exact items, which were the subject of complicated accounts. But he might state that, although the adjustment of the Abyssinian advances and expenditure was proceeding with unexampled rapidity, the greater part of the advances having already been refunded to the Indian Government, yet, as these complicated accounts approached final adjustment, there would be many items, claims, counter-claims, debits, credits and the like, to be settled. Among these items there would probably be the item alluded to by the Hon'ble Member. He trusted that it would be seen that this answer was as much as his official obligations would permit him to give.

HIS EXCELLENCY THE PRESIDENT said, he might further state that the conditions under which advances should be made by this Government on account of the Abyssinian Expedition were very strictly laid down at the time that

Expedition commenced, and HIS EXCELLENCY had every reason to believe that those conditions would be strictly fulfilled, and if they were, ample justice would be done both to the Home and the Indian Governments.

The Hon'ble SIR RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the Bill as amended be passed. He said that he desired to express his particular thanks to each Member of the Council for the generous confidence which had been shown towards the Financial Department in all the discussions relating to the Budget: he hoped that this tax would be administered so as to ensure the safety of the revenue without unnecessary trouble to the people; and he would assure the Council that t[illegible]ndeavours of the Government would be given to ensure, with the help [illegible]ax, that financial equilibrium which had been set forth in the Bud[illegible]

The Motion was put and agreed to.

POLICE SUPERANNUATION FUNDS' BILL.

The Hon'ble Sir RICHARD TEMPLE presented the Report of the Select Committee on the Bill to abolish the Police Superannuation Funds.

The Hon'ble Sir RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir RICHARD TEMPLE moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Sir RICHARD TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

LAND CUSTOMS' BILL.

The Hon'ble Sir RICHARD TEMPLE presented the Report of the Select Committee on the Bill to make better provision for the collection of land customs on certain foreign frontiers of the Presidencies of Fort Saint George and Bombay.

The Hon'ble Sir RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir RICHARD TEMPLE moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Sir RICHARD TEMPLE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CUSTOMS DUTIES' BILL.

The Hon'ble SIR RICHARD TEMPLE also presented the Report [illegible]lect Committee on the Bill to amend the law relating to Customs Duties [illegible]aid the Council would remember that this was the particular Bill require[illegible] allow of the alterations necessary on the tariff valuations of certain articles liable to Customs Duties. If the Council passed this Bill, the executive measure to which it would give immediate effect was such as to afford the trading and commercial communities facilities in their intercourse with the Customs Department.

The Hon'ble MR. BULLEN said that, in consenting to the passing of this Bill, and thus placing in the hands of the Executive Government the power of lowering or raising the tariff valuations, he trusted it was distinctly understood that no increase in the valuations would, on other occasions, be made by the Government without previous communication as hitherto with the various Chambers of Commerce. He wished distinctly to guard himself against being understood to agree to the placing in the hands of the Executive Government the unrestricted power of increasing the tariff valuations. He would, however, have no objections to make to the passing of the Bill if the Government would give an assurance that they would communicate with the representatives of the mercantile community whenever it might be their intention to increase the tariff valuations.

The Hon'ble SIR RICHARD TEMPLE said, he had no hesitation in assuring the Hon'ble Member that, before proposing any increase whatever on the tariff valua-

tions, the Government would be most careful to consult those most interested in the matter.

The Hon'ble MR. BULLEN said he trusted that the Government would soon see its way to effect a large revision of both the import and export tariff, especially of the export tariff, in which many articles were made dutiable in opposition to sound principles of political economy. He might instance the export duty on Native made cotton piece goods; he might also refer to the export on grain. He was aware that grain was an item from which a large export duty was derived, and that the Government might not be prepared to reduce the duty on that article at present. The present rate of three annas per maund was a very heavy duty. In Burma and the East Coast ports it amounted to a charge of fifteen per cent. on the cost, and this when a large trade had sprung up in Saigon and Siam, whence the export was free. From 1,300 tons, which comprised the import of rice from Siam and Cochin China into Europe in 1867, it increased last year to 37,000 tons, and in all probability the import would be larger this year.

The Hon'ble SIR RICHARD TEMPLE said that, in reply to the observations just made, he could only refer the Hon'ble Member to that passage in his Budget Statement in which he referred in a general way to the subject of tariff valuations and import and export duties.

The Hon'ble SIR RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council adjourned till the 19th March 1869.

WHITLEY STOKES,

Secy. to the Council of the Governor General
for making Laws and Regulations.

CALCUTTA,
The 18th March 1869.

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